TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. ~~24~~ 24

HALLIBURTON OIL WELL CEMENTING COMPANY,
APPELLANT,

vs.

JAMES S. REILY, COLLECTOR OF REVENUE,
STATE OF LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

FILED JULY 27, 1961

PROBABLE JURISDICTION NOTED, OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 264

HALLIBURTON OIL WELL CEMENTING COMPANY, APPELLANT,

vs.

JAMES S. REILY, COLLECTOR OF REVENUE, STATE OF LOUISIANA.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

INDEX

	Original	Print
Record from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana		
Minute entry of Judgment	3	1
Petition	5	2
Attachment No. 8—Photograph of oil well cementing truck and equipment	42	17
Attachment No. 9—Photograph of electrical well logging truck and equipment	43	19
Answer	51	20
Stipulation of facts	54	22
Judgment	112	31
Clerk's certificate (omitted in printing)	113	31
Proceedings in the Supreme Court of Louisiana	115	32
Motion to substitute party and order thereon	115	32
Motion and Order to advance cause to preference docket and specially assign case for argument	117	33

RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 6, 1961

	Original	Print
Opinion, Hamlin, J.	119	34
Application on behalf of Halliburton Oil Well Cementing Company for rehearing	135	50
Order denying application for rehearing	149	63
Order for supersedeas, stay of execution and stay and recall of mandate and stay and arrest of judgment	153	64
Supersedeas bond	155	65
Notice of appeal to the Supreme Court of the United States	158	66
Clerk's certificate (omitted in printing)	171	76
Order noting probable jurisdiction	172	77

[fol. 3]

IN NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 58,785—Division C

Honorable Jess Johnson, Judge presiding, was opened pursuant to adjournment.

HALLIBURTON OIL WELL CEMENTING COMPANY,

vs.

The Collector of Revenue, State of Louisiana, ROBERT L. ROLAND (Formerly James S. Reilly).

MINUTE ENTRY OF JUDGMENT—October 13, 1959

This case having come on regularly for trial pursuant to previous assignment and having been duly submitted to this court upon a stipulation of facts and the court now being of the opinion that the law and the evidence are in favor of the plaintiff and against the defendant, for written reasons assigned:

It Is Ordered, Adjudged and Decreed that there be judgment herein in favor of Halliburton Oil Well Cementing Company, and against the defendant, Robert L. Roland, Collector of Revenue of the State of Louisiana, in the sum of Forty-three Thousand Three Hundred Twenty-five and 63/100 ($43,325.63) Dollars, plus interest at the rate of two per cent (2%) from December 13, 1956, until paid, and for all costs of this suit.

Judgment Rendered and Read in Open Court the ..... day of ..... 1959.

Judgment Signed in Open Court the 13th day of October 1959.

Jess Johnson, Judge, 19th Judicial District Court.

[fol. 5]

IN 19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 58,785—Division "C"

HALLIBURTON OIL WELL CEMENTING CO.,

vs.

JAMES S. REILY, Collector of Revenue
of the State of Louisiana.

PETITION—Filed December 13, 1956

To the Honorable the Judges of the Nineteenth Judicial District Court of the State of Louisiana, within and for the Parish of East Baton Rouge:

The Petition of Halliburton Oil Well Cementing Company, a Delaware corporation, domiciled in the City of Wilmington, Delaware, with its principal place of business in Duncan, Oklahoma, and having a permit to do business in the State of Louisiana, respectfully represents that:

I.

Petitioner is engaged in the business of servicing oil wells throughout the oil producing states of the United States, including Louisiana, and its operations include, among other things, the operation and use—in Louisiana—of specialized oil well and oil field equipment, including but not limited to oil well cementing trucks and equipment and electrical oil well servicing trucks and equipment. Petitioner, however, does not sell such specialized equipment to the oil well or oil field operators but permits its use by means of agreements by virtue of which title to the equipment always remains in petitioner.

II.

For the taxable years herein at issue, i. e., the calendar years 1952, 1953, 1954 and 1955, petitioner has regularly filed with the State of Louisiana a tax return showing the Use Tax moneys due to the State of Louisiana, and has paid to said State at the time of filing its statutory use tax returns, use tax moneys for said years as follows:

[fol. 6]

1952	$21,375.66	
1953	33,646.01	
1954	44,455.40	
1955	23,355.54	(1st 5 months Only)
Total	$122,832.61	

III.

By letter dated September 29, 1955, directed to petitioner from the Department of Revenue, State of Louisiana, the Collector notified petitioner that it had determined a deficiency in the amount paid the State by petitioner, and proposed an assessment, against petitioner, for the Louisiana Use Tax, for the Period January 1, 1952, through May 31, 1955, as follows:

Proposed assessment (Use Tax)	$50,588.58
Interest to August 30, 1955	4,890.47
Total	$55,479.05

A copy of this letter, of September 29, 1955 is attached hereto, and made a part hereof, as "Annexed No. 1". The detailed calculations of the Collector, which were attached to said letter as "Exhibit 'A'" thereto are not attached to this petition because of their bulk, but will be produced on the trial of this case.

IV.

By written protest, signed by Robert O. Brown, Vice President and Attorney for Petitioner and G. D. McEnroe,

Treasurer of petitioner, on the 21st day of November, 1955, petitioner protested to and advised the Collector, and said Department of Revenue of the State of Louisiana, that it respectfully disagreed with the position of the Collector herein, and his proposed assessment, on the grounds that the proposed assessment was illegal and unconstitutional. A copy of said "Protest" is attached hereto, and made a part hereof, as "Annexed No. 2" to this petition.

V.

By letter dated December 1, 1955, signed by Robert L. Roland, Attorney, for the Department of Revenue, directed to Mr. Robert O. Brown, Vice President and General Counsel of petitioner, the Collector advised petitioner, that, except as to duplications shown and certain proper- [fol. 7] ties which never came into Louisiana at all, the Collector adhered completely to its original position and insisted that the purported deficiency and proposed assessment of the Louisiana Use Tax be paid by petitioner. A copy of said letter is enclosed herewith and made a part hereof as "Annex No. 3". In this connection the petitioner states that it reviewed the audit which was used as a basis by the Department of Revenue, State of Louisiana, in making the aforesaid deficiency Use Tax against petitioner, and upon such review found numerous duplications and other errors as shown in reconciliation of additional Use Tax assessment which is attached hereto and made a part hereof as "Annex No. 4". Petitioner states that such reconciliation is limited to duplications and other errors and does not include petitioner's principal objection to such assessment as will more fully appear hereinafter.

VI.

Subsequent oral conferences with representatives of the Collector were to no avail and therefore, in order to prevent formal proceedings against the petitioner by the Collector for the collection of said use tax moneys, petitioner on the 13 day of December, 1956, delivered to the Collector, pursuant to his demands, its check to his order in the sum of Fifty-seven thousand, two hundred seventy-eight dol-

lars and seventeen cents ($57,278.17), and also a check for $142.83 representing additional interest representing payment of the principal and interest upon said use tax money, Forty-three thousand, one hundred eighty-nine dollars and twenty-seven cents ($43,189.27) (plus the proportionate part of said additional interest) of which petitioner denies are due to the State of Louisiana, as hereinafter shown in paragraph No. 10 of this petition. The manner of calculating the said sum, thus paid, is more fully shown by two letters, both dated November 8, 1956, one (attached hereto and made a part hereof as "annex No. 5") being addressed to the said Robert O. Brown from Victor H. Powers, Jr., of petitioner's Tax Department, and the other (attached hereto and made a part hereof as "Annex No. 6") being addressed from the said Robert O. Brown, General Counsel, to Taylor, Porter, Brooks, Fuller & Phillips, Attorneys, Baton Rouge, Louisiana.

[fol. 8]

VII.

Said sum ($57,278.17) and said $142.83 was paid under protest, (the basis of which was fully set forth in written protest heretofore made a part of this petition as "Annex No. 2") and, at the same time, petitioner notified the Collector, in writing, that this suit would be brought under and pursuant to the laws of the State of Louisiana, and particularly Louisiana Revised Statutes of 1950, R.S. 47:1576, for the recovery and refunding to petitioner of said moneys, in principal and interest, plus legal interest on the whole.

VIII.

By letter dated the 13 day of December, 1956, a duplicate original of which is attached hereto and made a part hereof, as "Annex No. 7", the Collector, acting through his Attorney, Robert L. Roland, acknowledged receipt of said sum of Fifty-seven thousand, two hundred seventy-eight dollars and seventeen cents ($57,278.17), and said additional interest, in the sum of $142.83 and advised petitioner, through its attorneys, that said sums had been received and would be segregated and held in escrow by

the State of Louisiana, all as is more fully provided by the laws of the State of Louisiana, and particularly R. S. 47:1576.

IX.

As more fully appears from the foregoing, and from the Annexes hereto, and as will be more fully shown on the trial hereof, the proposed tax deficiency, and proposed assessment,—represented by the payment under protest hereinabove described—is founded upon three separate contentions by the State, namely:

1. For the purposes of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used therein by petitioner, the Collector would include not only the actual cost to petitioner of the physical equipment and parts purchased by petitioner outside of Louisiana, and incorporated (outside of Louisiana) into said specialized equipment, but [fol. 9] would also include the labor and shop overhead, incurred by petitioner in constructing said specialized field equipment in its own shops in Oklahoma. (This phase of the matter is hereinafter sometimes called "*The labor and shop overhead phase*" of this case.)

2. For the purpose of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used therein by petitioner, the Collector would take the "*original cost*" of all equipment brought into the State of Louisiana without making any allowance whatsoever for depreciation, regardless of the extent to which said equipment might be aged, worn out, or —in true fact—greatly depreciated in value, prior to its being brought into the State of Louisiana. (This phase of the matter is hereinafter sometimes called "*The 'cost price versus depreciated value' phase*" of this case.)

3. For the purpose of calculating the Louisiana Use Tax upon items of specialized oil well equipment

brought into the State of Louisiana and used therein by petitioner, the Collector would refuse to exempt from the use tax the value of certain equipment (including but not limited to an airplane) which was purchased outside of Louisiana by petitioner, from vendors not regularly engaged in the business of selling such items. (This phase of the matter is hereinafter sometimes called "*The isolated sale phase*" of this case.)

[fol. 10]

X.

As will be more fully shown on the trial of this case, the tax moneys demanded by the Collector—as aforesaid—and paid herein under protest (exclusive of said $142.83 additional interest) as outlined above, are allocable to the three phases of this case as follows:

Phase	*Principal*	*Interest*	*Total*
1. The labor and shop overhead phase	$30,942.20	$5,181.29	$36,123.49
2. The cost price versus depreciated value phase	2,296.83	378.01	2,674.84
3. The isolated sale phase	3,789.20	601.74	4,390.94
Total amount in dispute	$37,028.23	$6,161.04	$43,189.27
Amount not in dispute	12,063.03	2,025.87	14,088.90
Totals	$49,091.26	$8,186.91	$57,278.17

XI.

As to each of the aforesaid three phases of this case, the taxpayer alleges—inter alia—that the Use Tax, if interpreted and applied as the Collector would interpret and apply it here would cast upon the taxpayer (petitioner) a burden more onerous than that which would be levied by

the Louisiana Sales and Use Tax had the transactions involved occurred in Louisiana; that a state Use Tax may be upheld as reasonable, legal and constitutional only insofar as the burden thereof is equal to, and not in excess of the burden of the Sales Tax of that same state, to which Sales Tax said Use Tax is complementary. And the taxpayer further alleges that:

A. The assessment proposed by the Collector, insofar as it results in a greater use tax liability than would be imposed under the sales tax if the transactions had taken place in Louisiana, is contrary to the terms and wording of the Louisiana taxing statute, as well as contrary to the intent and purpose of the Louisiana Legislature in enacting the taxing statute; and

[fol. 11]

B. The practical effect of the Collector's proposed assessment is to subject goods moving interstate commerce to a greater tax liability than would be imposed in the same situation, if all of the operative facts had occurred within the State of Louisiana, and therefore, the taxing statute (if interpreted and applied as the Collector would interpret and apply it here) would amount to a discrimination against interstate commerce prohibited by the Commerce Clause of the United States Constitution; and

C. The interpretation and application of the Louisiana Use Tax Statute, as proposed here by the Collector, is so unreasonable, arbitrary and capricious, and is so without regard to the true facts, and the economic realities of the actual situations, as to amount to a denial of due process of law within the meaning of the "due process" clause of the United States Constitution.

XII.

Regulation of interstate commerce is a function explicitly reserved to the Congress of the United States by

virtue of the Constitution of the United States and particularly Article I, Section 8, Clause 3 thereof, and the tax here demanded and contended for by the Collector of Revenue of Louisiana directly infringes on that right of regulation vested in the Federal Congress, for the reason, among others, that is an attempt by the State of Louisiana to lay a tax on the privilege of engaging in interstate commerce and upon the carrying on of the business of interstate commerce.

XIII.

Petitioner alleges that it would be deprived of its property without due process of law contrary to the protection and guaranty granted under the Constitution of the United [fol. 12] States and particularly under the Fourteenth Amendment thereof and under Article I, Section 2, of the Constitution of the State of Louisiana should it be required to pay said taxes and the refund herein claimed be denied to it.

XIV.

As concerns 1. *The Labor and Shop overhead Phase* of this case, the petitioner states that the labor and shop overhead expenditure included in the Department of Revenue's, State of Louisiana, deficiency assessment resulting in an alleged additional tax liability, plus interest of Thirty-six thousand, one hundred twenty-three dollars and forty-nine cents ($36,123.49), as heretofore shown in Paragraph X above, pertains to the manufacture, assembly, installation, and build up of the oil well service units employed by petitioner in its oil well service operations in the State of Louisiana. The oil well service units involved are generally known as an oil well cementing truck and equipment, and an electrical well logging truck and equipment. Attached hereto and made a part hereof marked "Annex No. 8" is a photograph of an oil well cementing truck and equipment. Also attached hereto and made a part hereof marked "Annex No. 9" is a photograph of an electrical well logging truck and equipment.

The petitioner maintains at its principal place of business in Duncan, Oklahoma Facilities and skilled employees

necessary in the manufacture, assembly, installation and build up of the aforesaid units. In conjunction with such activities petitioner maintains an engineering staff which is constantly engaged in research and development work essential in the maintenance and improvement of the service units to meet the requirements of field oil well service operations. Petitioner procures from various and sundry vendors throughout the United States all raw materials, semi-finished and finished articles necessary in the manufacture, assembly, installation and build up of such well service units. This further entails the maintenance of a considerable inventory of raw materials, semifinished and finished articles.

[fol. 13] Petitioner further states that when a well service unit has been completely processed at Duncan, Oklahoma and has been tested for operation, such well service units are assigned to the various field camps of petitioner in the United States. The well service units obtain a permanent situs at such assigned location unless transferred to another field camp location where greater use may be made of it.

Petitioner further states that it does not manufacture, assemble, install and build such units at any place in the State of Louisiana for the reason it does not have the necessary facilities or employees for such an operation. The oil well service units involved in this controversy are not obtainable from any other manufacturer in the United States. Petitioner further states that it is not engaged in the "manufacture-and-sale" of such units.

Petitioner states that the Labor and Shop Overhead expenditure involved in this controversy amounts to One million, five hundred forty-seven thousand, one hundred nine dollars, and seventy cents ($1,547,109.70) as shown more fully in column 5 of Annex No. 10 attached hereto and made a part hereof. For the purpose of explanation, petitioner has recomputed and broken down the various items of value upon which the additional use tax assessment was made. By way of explanation and referring to Annex No. 10, petitioner states that Sixty-seven thousand, eight hundred seventy-two dollars and eighty-five cents ($67,872.85) Labor and Shop Overhead was expended in the

process referred to above on depreciable assets transferred into Louisiana after such assets were first used in a state other than the State of Louisiana, and an additional One million, four hundred seventy-nine thousand, two hundred thirty-six dollars and eighty-five cents ($1,479,236.85) Labor and Shop Overhead was expended in the same process referred to above on *new* oil well service units and supplies which were immediately transferred to the State of Louisiana. These two amounts are set out in column 3 and 4 and are totaled in column 5 of Annex No. 10. The total Labor and Shop Overhead expended on assets which were transferred into the State of Louisiana may therefore be [fol. 14] found in column 5 of Annex No. 10. It is this value upon which the State of Louisiana has assessed additional Use Tax in the amount of Thirty thousand, nine hundred forty-two dollars and twenty cents ($30,942.20).

If petitioner had purchased its materials, operated its shops, and incurred its Labor and Shop Overhead expenses at a location within the State of Louisiana, there would have been a sales tax due and paid to the State of Louisiana upon the cost of the materials purchased in Louisiana and a Use Tax on such materials purchased outside of Louisiana; but there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead. Therefore, the Louisiana Use Tax (as the Collector would here interpret and apply it) would place upon petitioner a tax burden solely and only because petitioner is conducting its shop operations at a location beyond the borders of the State of Louisiana, and is thereafter physically transporting its specialized oil well equipment across the interstate border of the State of Louisiana. In sum, the tax burden would fall upon persons who conduct such shop operations outside Louisiana, and then cross the state line in Louisiana, but such tax burden would not fall upon persons who conduct identical operations just inside the Louisiana interstate border line.

XV.

As concerns 2. *The Cost Price v. Depreciated Value Phase* of this case, the petitioner shows that: This question involves an attempt on the part of the Department of

Revenue, State of Louisiana, to levy a use tax based upon the original cost price of the well service units transferred into Louisiana for operation therein by petitioner even though such well service units had been in operation in states other than the State of Louisiana prior to the date of transfer of such units into the State of Louisiana. The original material cost of such equipment which was first used in states other than Louisiana and later transferred into Louisiana is Seven hundred seventeen thousand, nine hundred ninety-two dollars and sixty-nine cents ($717,992.69) as set out in column 2 of Annex No. 10. The state has therefore not given any consideration to the value of [fol. 15] this material at the time it was transferred into the state of Louisiana. Petitioner further states that depreciation as set out in column 8 of Annex No. 10 amounting to One hundred fourteen thousand, eight hundred forty-one dollars and fifty-two cents ($114,841.52) was sustained on the material costs of assets transferred into Louisiana prior to the time of such transfer, and such depreciation was entirely ignored and disallowed by the Department of Revenue, State of Louisiana, in calculating the Use Tax.

The Department of Revenue has not only failed to take into consideration the One hundred fourteen thousand, eight hundred forty-one dollars and fifty-two cents ($114,841.52) mentioned above, but it has also failed to take into consideration the depreciation sustained, Thirty-three thousand, two hundred sixty-four dollars and eighty cents ($33,264.80) on assets which were purchased from vendors not regularly engaged in making sales of such assets. The depreciation sustained on the cost of such equipment is set out in column 7 of Annex No. 10, and the cost of the equipment purchased in isolated transactions is set out in column 1 of Annex No. 10. The petitioner contends that the entire One million, five hundred forty-seven thousand, one hundred nine dollars and seventy cents ($1,547,109.70), Labor and Shop Overhead shown in column 5 of Annex No. 10 and referred to in Paragraph XIV above, is not subject to Louisiana Use Tax since such Labor and Shop overhead were expended by petitioner and not by another party or taxpayer. If however such amount, One million five hundred forty-seven thousand, one hundred nine dollars, and

seventy cents ($1,547,109.70), Labor and Shop Overhead, is held to be subject to use tax, petitioner contends, in the alternative, that it should receive credit for depreciation sustained on it prior to the time of the transfer of the assets into Louisiana. The Labor and Shop overhead expended in the manufacture and assembly of assets which were first used outside of Louisiana amounted to Sixty-seven thousand, eight hundred seventy-two dollars and eighty-five cents ($67,872.85) as shown in column 3 of Annex No. 10. [fol. 16] Depreciation sustained on this labor and shop overhead prior to the time of the transfer into Louisiana amounted to Twenty-seven thousand, three hundred dollars ($27,300.00). This amount is set out in column 9 of Annex No. 10.

Petitioner states that the depreciation rates used in computing the depreciation sustained and set out in Annex No. 10 are the same rates as are used by the petitioner for Federal and State income tax purposes as well as securities and exchange purposes and book purposes. The rates of depreciation used are set out on the attached document marked "Annex No. 11".

Petitioner has stated above that the original material cost of assets manufactured by it and first used outside Louisiana and later transferred into Louisiana amounted to Seven hundred seventeen thousand, nine hundred ninety-two dollars and sixty-nine cents ($717,992.69) as set out in column 2 of Annex No. 10. Depreciation sustained on such material cost and set out in column 8 of Annex No. 10 amounts to One hundred fourteen thousand, eight hundred forty-one dollars and fifty-two cents ($114,841.52). It is the tax on the difference between these two values, Six hundred three thousand, one hundred fifty-one dollars and seventeen cents ($603,151.17), or tax of Twelve thousand, sixty-three dollars and three cents ($12,063.03), that petitioner does not contest and claims to be due the State of Louisiana. This amount of tax is set out in Paragraph X of this petition.

Petitioner further states to calculate the Louisiana Use Tax on the basis of original cost of such oil well service units is not in accordance with the provisions of the Loui-

siana Law, Section 47.303, which specifies that the use of tangible personal property in the State of Louisiana shall:

> "be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event."

[fol. 17] Petitioner further states that the State of Louisiana is without taxing power and taxing jurisdiction to calculate Use Tax on the basis of original cost where tangible personal property is purchased and used, as above described outside of the State of Louisiana. It is a denial of due process of law to this taxpayer to have Louisiana Use Tax liability on depreciated tangible personal property on the basis of original cost where purchased and used outside the State of Louisiana. Petitioner further states that such tax is a denial of due process of law to this petitioner and places upon interstate commerce an unlawful burden designed to discriminate against such commerce.

XVI.

As concerns 3. *The Isolated Sales Phase* of this case, the petitioner shows that it purchased fourteen (14) oil well cementing service units from the Spartan Tool and Service Company of Houston, Texas when that Company determined that it should no longer continue in the business of servicing oil wells. The Spartan Tool and Service Company was not engaged in the sale of such equipment, and made the sale to the petitioner only after it had decided to quit business. In addition thereto, petitioner purchased an airplane from the Western Newspaper Union of New York, which company is not regularly engaged in the business of selling airplanes. These purchases are set out in "Annex No. 12" which is attached hereto and made a part hereof. Petitioner states that the original cost of the above described purchases amounted to One hundred eighty-nine thousand, four hundred sixty dollars and nineteen cents ($189,460.19) as set out in column 1 of Annex No. 10. The amount of tax assessed on such property which was brought into the State of Louisiana amounts to three thousand,

seven hundred eighty-nine dollars and twenty cents ($3,789.20) as set out in Paragraph X of this petition. Petitioner states that the entire One hundred eighty-nine thousand, four hundred sixty dollars and nineteen cents ($189,460.19) is not subject to Louisiana Use Tax because such [fol. 18] property would not have been subject to Louisiana Sales or Louisiana Use Tax had the purchase been made within the State of Louisiana, and the mere fact that the purchases were made outside the State of Louisiana and then brought into the State of Louisiana, does not alter the situation. If such property is held to be taxable however, petitioner states that depreciation sustained on such property in the amount of Thirty-three thousand, two hundred sixty-four dollars and eighty cents ($33,264.80) prior to its transfer into Louisiana should be deducted from the original cost, thus making the tax payable Three thousand, one hundred twenty-three dollars and ninety-one cents ($3,123.91) instead of Three thousand, seven hundred eighty-nine dollars and twenty cents ($3,789.20). The amount of depreciation sustained on such isolated transactions prior to the time materials were brought into the State of Louisiana is set out in column 7 of Annex No. 10. Had such property been purchased by petitioner in the State of Louisiana, there clearly would have been no sales tax due. By levying a Use Tax upon the same property merely because it was purchased outside the State of Louisiana places upon petitioner a tax burden solely and only because petitioner made contracts of purchase at locations beyond the borders of the State of Louisiana, and then brought equipment into Louisiana.

Wherefore, petitioner prays that the Collector of Revenue of the State of Louisiana, James S. Reily, be duly cited to appear and answer this petition and that, after all legal delays and due legal proceedings are had, there be judgment herein in favor of petitioner, and against said Collector of Revenue in the sum of Forty-three thousand, one hundred eighty-nine dollars and twenty-seven cents ($43,189.27) plus the proportionate part of the $142.83 additional interest, and plus legal interest thereon from December 13, 1956, until payment is made, and for all costs of these proceedings.

Petitioner further prays for general and equitable relief.

[fol. 19] Halliburton Oil Well Cementing Company, By: Robert O. Brown, Vice President and General Counsel, Taylor Porter Brooks Fuller & Phillips, By B. B. Taylor, Jr., By C. M. Porter.

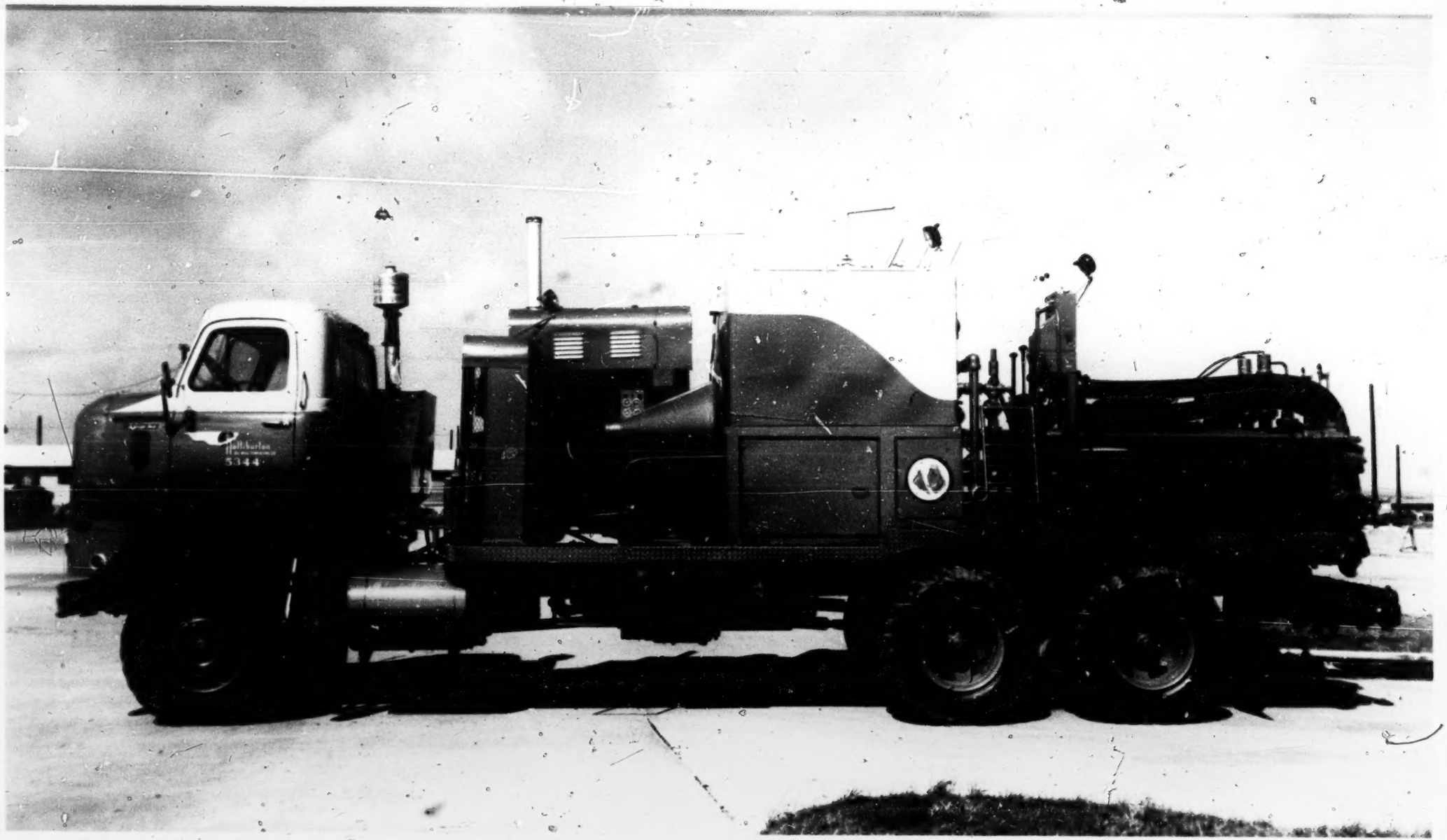
Duly sworn to by Robert O. Brown, jurat omitted in printing.

[fol. 42] PHOTOGRAPH OF OIL WELL CEMENTING TRUCK AND EQUIPMENT

(Attached to Petition as "Annex No. 8")

ANNEX No. 8

(See Opposite ☞)


Halliburton
5344

[fol. 43] PHOTOGRAPH OF ELECTRICAL WELL LOGGING TRUCK AND EQUIPMENT

(Attached to Petition as "Annex No. 9")

ANNEX No. 9

(See Opposite ☞)


Halliburton
OIL WELL CEMENTING CO.

[fol. 51]

IN 19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[Title omitted]

ANSWER—Filed February 4, 1957

To the Honorable the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana:

Now comes James S. Reily, Collector of Revenue for the State of Louisiana, appearing herein through undersigned counsel solely in his said official capacity, and for answer to plaintiff's petition says:

1.

Respondent admits the allegations of Paragraph 1.

2.

Respondent admits the allegations of Paragraph 2.

3.

Respondent admits the allegations of Paragraph 3.

4.

Respondent admits the allegations of Paragraph 4.

5.

Respondent admits the allegations of Paragraph 5.

6.

Respondent admits the allegations of Paragraph 6.

7.

Respondent admits the allegations of Paragraph 7.

8.

Respondent admits the allegations of Paragraph 8.

9.

Respondent denies the allegations of Paragraph 9.

10.

Respondent denies the allegations of Paragraph 10.

[fol. 52]

11.

Respondent denies the allegations of Paragraph 11.

12.

The allegation of Paragraph 12 that the regulation of interstate commerce is a function explicitly reserved to the Congress of the United States is admitted. The remaining allegations of Paragraph 12 are denied.

13.

Respondent denies the allegations of Paragraph 13.

14.

Respondent denies the allegations of Paragraph 14.

15.

Respondent denies the allegations of Paragraph 15.

16.

Respondent denies the allegations of Paragraph 16.

Wherefore, the respondent prays that after due proceedings had, there be judgment rendered in respondent's favor,

and against the petitioner rejecting petitioner's demands; and for all such additional relief as law, equity and the nature of the case may permit.

Robert L. Roland, Levi A. Himes, Chapman L. Sanford.

[fol. 53] *Duly sworn to by Robert L. Roland, jurat omitted in printing.*

[fol. 54]

IN 19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[Title omitted]

STIPULATION OF FACTS—Filed July 9, 1959

To the Honorable, the Judges of the Nineteenth Judicial District Court of the State of Louisiana, within and for the Parish of East Baton Rouge:

As a preliminary to this stipulation, the attention of the Court is respectfully called to the fact that the allegations of Paragraphs I, II, III, IV, V, VI, VII, and VIII, of the plaintiff's original petition, have been admitted by the Collector of Revenue, in the answer filed herein.

In addition to the allegations of fact stated in said paragraphs (I through VIII), it is agreed and stipulated by and between counsel for petitioner, Halliburton Oil Well Cementing Company, hereinafter called "Halliburton", and counsel for Collector of Revenue of the State of Louisiana, hereinafter called the "Collector", that the following facts are true and correct:

I.

This suit involves three issues:

1. For the purposes of calculating the Louisiana Use Tax upon items of specialized oil well equipment

brought into the State of Louisiana and used therein by petitioner, the Collector included the actual cost to petitioner of the physical equipment and parts purchased by petitioner outside of Louisiana, and incor- [fol. 55] porated, outside of Louisiana, into such specialized equipment, and also the labor and shop overhead, incurred by petitioner in constructing said specialized oil field equipment in its shops in Oklahoma. Halliburton admits that the physical equipment and parts should properly be included in the tax base, but denies that the labor and shop overhead were properly included. (This phase of the matter is hereinafter sometimes called "*The labor and shop overhead phase*" of this case.)

2. For the purpose of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used herein by petitioner, the Collector used the "original cost" of all equipment brought into the State of Louisiana without allowance for depreciation which had occurred prior to the equipment being brought into the State of Louisiana. Halliburton contends that the values used for computing the use tax due on this equipment should not be greater than the fair market value of the equipment at the time it was brought into Louisiana. (This phase of the matter is hereinafter sometimes called "*The cost price versus depreciated value phase*" of this case.)

3. For the purpose of calculating the Louisiana Use Tax upon items of equipment brought into the State of Louisiana and used herein by petitioner, the Collector assessed the use tax on the value of certain equipment (including specialized oil well equipment and an airplane) which was purchased outside Louisiana by petitioner, from vendors not regularly engaged in the business of selling such items. Halliburton denies that any sales tax or use tax is due to the State of Louisiana on these items. (This phase of the matter

is hereinafter sometimes called "*The isolated sale phase*" of this case.)

[fol. 56] II.

The tax moneys demanded by the Collector and paid herein under protest are allocable to the three phases of this case as follows:

Phase	*Principal*	*Interest*	*Total*
1. The labor and shop overhead phase	$30,942.20	$5,296.23	$36,238.43
2. The cost price versus depreciated value phase	2,296.83	386.15	2,682.98
3. The isolated sale phase	3,789.20	615.02	4,404.22
Total amount in dispute	$37,028.23	$6,297.40	$43,325.63
Amount not in dispute	12,063.03	2,032.34	14,095.37
Totals	$49,091.26	$8,329.74	$57,421.00

III.

As will appear in greater detail below, the three phases of this case, listed in Paragraph II above, are interrelated and overlapping, for the reason that a portion of the properties, which are the subject of Phase #1 (Labor and Shop Overhead Phase) and Phase #3 (Isolated Sale Phase), had sustained some depreciation prior to being brought into Louisiana.

IV.

As concerns *1. The Labor and Shop Overhead Phase* of this case, the labor and shop overhead expenditure included in the Department of Revenue's deficiency assess-

ment pertains to the manufacture, assembly, installation, and build up of the oil well service units employed by petitioner in its oil well service operations in the State of Louisiana. The oil well service units involved are generally known as oil well cementing trucks and equipment, and as electrical well logging trucks and equipment.

Attached to the original petition and made a part thereof marked "Annex No. 8" is a photograph of an oil well cementing truck and equipment. Also attached thereto and made a part thereof marked "Annex No. 9" is a photograph of an electrical well logging truck and equipment. Said two photographs are hereby made a part of this stipulation, by reference.

The petitioner maintains at its principal place of business in Duncan, Oklahoma, facilities and employees for the manufacture, assembly, installation and build up of the afore-[fol. 57] said units. In conjunction with such activities petitioner maintains an engineering staff which is engaged in research and development work essential in the maintenance and improvement of the service units to meet the requirements of field oil well service operations. Petitioner procures from various vendors throughout the United States raw materials, semi-finished and finished articles necessary for the manufacture, assembly, installation and build up of such well service units. This further entails the maintenance of a considerable inventory of raw materials, semi-finished and finished articles.

When a well service unit has been completely processed at Duncan, Oklahoma and has been tested for operation, such well service units are assigned to the various field camps of petitioner in the United States. The well service units obtain a permanent situs at such assigned location unless transferred to another field camp location where greafer use may be made of it.

Petitioner does not manufacture, assemble, install and build such units at any place in the State of Louisiana. Petitioner is not engaged in the selling of such units and does not manufacture such units for sale.

As to Annex 10 of the original petition, it is stipulated that a responsible official of Halliburton, having accurate

knowledge of the facts, if called to the wtiness stand, would testify under oath as follows:

> "The Labor and Shop Overhead expenditure involved in this controversy amounts to One million, five hundred forty-seven thousand, one hundred nine dollars, and seventy cents ($1,547,109.70) as shown more fully in column 5 of Annex No. 10 attached to the original petition, and made a part of this stipulation, by reference. For the purpose of clarity, petitioner has recomputed and broken down the various items of value upon which the additional use tax assessment was made. By way of explanation and referring to Annex No. 10, Sixty-seven thousand, eight hundred seventy-two dollars and eighty-five cents ($67,872.85) Labor and Shop Overhead was expended in the process referred to above on depreciable assets which were subsequently transferred into Louisiana after such assets [fol. 58] were first used in a state other than the State of Louisiana, and an additional One million, four hundred seventy-nine thousand, two hundred thirty-six dollars and eighty-five cents ($1,479,236.85) Labor and Shop Overhead was expended in the same process referred to above on new oil well service units and supplies which were immediately transferred to the State of Louisiana without prior use in another state. These two amounts are set out in columns 3 and 4 and are totalled in column 5 of Annex No. 10. The total Labor and Shop Overhead expended on assets which were transferred into the State of Louisiana may therefore be found in column 5 of Annex No. 10. It is this value upon which the State of Louisiana has assessed additional Use Tax in the amount of Thirty thousand, nine hundred forty-two dollars and twenty cents ($30,942.20)."

The Collector would object to such testimony as irrelevant and immaterial.

* * * * * * *

If Halliburton had purchased its materials, operated its shops, and incurred its Labor and Shop Overhead expenses

at a location within the State of Louisiana, there would have been a sales tax due to the State of Louisiana upon the cost of materials purchased in Louisiana and a Use Tax on materials purchased outside of Louisiana; but there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead.

V.

As concerns *2. The Cost Price v. Depreciated Value Phase* of this case, the Collector assessed a use tax based upon the original cost price of well service units transferred into Louisiana for operation therein by petitioner when such well service units had been theretofore in operation in states other than the State of Louisiana, and said equipment had sustained actual depreciation (not merely book depreciation) prior to the date of transfer of such equipment into the State of Louisiana.

As to Annex 10 of the original petition, it is stipulated that a responsible official of Halliburton, having accurate knowledge of the facts, if called to the witness stand, would [fol. 59] testify under oath as follows:

> "The original material cost of such equipment which was first used in the states other than Louisiana and later transferred into Louisiana is Seven Hundred seventeen thousand, nine hundred ninety-two dollars and sixty-nine cents ($717,992.69) as set out in column 2 of Annex No. 10. The state would not allow the deduction of the depreciation of this material, prior to the time it was transferred into the State of Louisiana. The depreciation as set out in column 8 of Annex No. 10 amounting to One hundred fourteen thousand, eight hundred forty-one dollars and fifty-two cents ($114,841.52) was sustained on the material costs of assets transferred into Louisiana, prior to the time of such transfer, and such depreciation was not allowed as a deduction from original cost price, by the Department of Revenue, State of Louisiana, in calculating the Use Tax.
>
> "The Department of Revenue did not allow as a deduction the One hundred fourteen thousand, eight hun-

dred forty-one dollars and fifty-two cents ($114,841.52) mentioned above, and also did not allow as a deduction the depreciation sustained, Thirty-three thousand, two hundred sixty-four dollars and eighty cents ($33,264.80) on assets which were purchased from vendors not regularly engaged in making sales of such assets. The depreciation sustained on the cost of such equipment is set out in column 7 of Annex No. 10, and the cost of the equipment purchased in isolated transactions is set out in column 1 of Annex No. 10. The petitioner contends that the entire One million, five hundred forty-seven thousand, one hundred nine dollars and seventy cents ($1,547,109.70), Labor and Shop Overhead shown in column 5 of Annex No. 10 is not subject to Louisiana Use Tax since such Labor and Shop overhead were expended by petitioner and not by another party. If, however, such amount, One Million, five hundred forty-seven thousand, one hundred nine dollars and seventy [fol. 60] cents ($1,547,109.70), Labor and Shop Overhead, is held to be subject to use tax, petitioner contends (in the alternative) that it should receive credit for depreciation sustained on it prior to the time of the transfer of the assets into Louisiana. The Labor and Shop overhead expended in the manufacture and assembly of assets which were first used outside of Louisiana amounted to Sixty-seven thousand, eight hundred seventy-two dollars and eighty-five cents ($67,872.85) as shown in column 3 of Annex No. 10. Depreciation sustained on this labor and shop overhead prior to the time of the transfer into Louisiana amounted to Twenty-seven thousand, three hundred dollars ($27,300.00). This amount is set out in column 9 of Annex No. 10.

"The original material cost of assets manufactured by petitioner and first used outside Louisiana and later transferred into Louisiana amounted to Seven hundred seventeen thousand, nine hundred ninety-two dollars and sixty-nine cents ($717,992.69) as set out in column 2 of Annex No. 10. Depreciation sustained on such material cost and set out in column 8 of Annex No. 10 amounts to One hundred fourteen thousand, eight hun-

dred forty-one dollars and fifty-two cents ($114,841.52). It is the tax on the difference between these two values, Six hundred three thousand, one hundred fifty-one dollars and seventeen cents ($603,151.17), or tax of Twelve thousand, sixty-three dollars and three cents ($12,063.03), that petitioner does not contest and claims to be due the State of Louisiana."

The Collector would object to such testimony as irrelevant and immaterial.

* * * * * * *

VI.

As concerns *3. The Isolated Sales Phase* of this case, Halliburton purchased fourteen (14) oil well cementing service units from the Spartan Tool and Service Company of Houston, Texas when that company determined that it should no longer continue in the business of servicing oil [fol. 61] wells. The Spartan Tool and Service Company was not regularly engaged in the sale of such equipment, and made the sale to the petitioner only after it had decided to quit business. In addition thereto, petitioner purchased an airplane from the Western Newspaper Union of New York, which company is not regularly engaged in the business of selling airplanes. These purchases are set out in "Annex No. 12" which is attached to the original petition and made a part hereof, by reference. These purchases were casual, occasional and isolated sales, from the point of view of said vendors.

As to annex 10 of the original petition, it is stipulated that a responsible official of Halliburton, having accurate knowledge of the facts, if called to the witness stand, would testify under oath as follows:

"The original cost of the above described purchases amounted to One hundred eighty-nine thousand, four hundred sixty dollars and nineteen cents ($189,460.19) as set out in column 1 of Annex No. 10 to the original petition. The amount of tax assessed on such property which was brought into the State of Louisiana amounts to Three thousand, seven hundred eighty-

nine dollars and twenty cents ($3,789.20) as set out in Paragraph II of this Stipulation."

The Collector would object to such testimony as irrelevant and immaterial.

* * * * * * *

It is further stipulated that the entire One hundred eighty-nine thousand, four hundred sixty dollars and nineteen cents ($189,460.19) would not have been subject to Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made within the State of Louisiana. Halliburton contends that the entire One hundred eighty-nine thousand, four hundred sixty dollars and nineteen cents ($189,460.19) is not subject to the Louisiana Use Tax. However, if such property is held to be taxable, Halliburton contends (alternatively) that depreciation sustained on such property in the amount of Thirty-three thousand, two hundred sixty-four dollars and eighty cents ($33,264.80) prior to its transfer into Louisiana should be [fol. 62] deducted from the original cost, thus making the tax payable Three thousand, one hundred twenty-three dollars and ninety-one cents ($3,123.91) instead of Three thousand, seven hundred eighty-nine dollars and twenty cents ($3,789.20). The amount of depreciation sustained on such isolated transactions prior to the time materials were brought into the State of Louisiana is set out in column 7 of Annex No. 10.

Chapman L. Sanford, Attorney for the Collector of Revenue, Defendant.

B. B. Taylor, Jr., of Taylor, Porter, Brooks, Fuller & Phillips, Attorney for Plaintiff.

Baton Rouge, La.
July 9, 1959.

[fol. 112]

IN 19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[Title omitted]

JUDGMENT—October 13, 1959

This case having come on regularly for trial pursuant to previous assignment, and having been duly submitted to this Court upon a Stipulation of Facts, and the Court now being of the opinion that the law and the evidence are in favor of the plaintiff, and against the defendant, for written reasons assigned,

It Is Ordered, Adjudged and Decreed that there be judgment herein in favor of Halliburton Oil Well Cementing Company and against the defendant, Robert L. Roland, Collector of Revenue of the State of Louisiana, in the sum of Forty-three Thousand Three Hundred Twenty-five and 63/100 ($43,325.63) Dollars, plus interest at the rate of two per cent (2%) from December 13, 1956, until paid, and for all costs of this suit.

Judgment rendered and read in open Court the ..... day of ....., 1959.

Judgment signed in open Court the 13 day of October, 1959, at Baton Rouge, Louisiana.

Jess Johnson, Judge, 19th Judicial District Court.

[fol. 113] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 115]

SUPREME COURT OF LOUISIANA

Number 44,934

HALLIBURTON OIL WELL CEMENTING COMPANY,

v.

JAMES S. REILY, Collector of Revenue of the State of Louisiana (Since Succeeded by Robert L. Roland).

MOTION TO SUBSTITUTE PARTY AND ORDER THEREON —November 9, 1960

On motion of Roland Cocreham, Collector of Revenue, through undersigned counsel, and on suggesting to the Court that the defendant, James S. Reily, (lawfully succeeded by Robert L. Roland) in the above entitled and numbered proceeding was named in such suit as the duly commissioned and qualified Collector of Revenue of Louisiana and was sued as such in his official capacity, and that Robert L. Roland was lawfully succeeded in that capacity by Roland Cocreham, who has been duly commissioned and qualified Collector of Revenue of the State of Louisiana, and therefore, mover desires that the name of Roland Cocreham be shown as the duly commissioned and qualified Collector of Revenue of the State of Louisiana, and that he be substituted as defendant in the above numbered and entitled proceedings in accordance with law.

It Is Ordered by the Court that Roland Cocreham in his official capacity as Collector of Revenue of the State of Louisiana, duly commissioned and qualified, be and he is hereby substituted as defendant in the above numbered and entitled cause.

New Orleans, Louisiana, this ..... day of November, 1960.

....., Chief Justice.

Baton Rouge, Louisiana,
November 9, 1960.

Chapman L. Sanford, Attorney for the Collector of Revenue.

[fol. 116] *Duly sworn to by Chapman L. Sanford, jurat omitted in printing.*

[fol, 117]

SUPREME COURT OF LOUISIANA

Number 44,934

HALLIBURTON OIL WELL CEMENTING CO.,

vs.

JAMES S. REILY, Collector of Revenue of the State of Louisiana.

MOTION AND ORDER TO ADVANCE CAUSE TO PREFERENCE DOCKET AND SPECIALLY ASSIGN CASE FOR ARGUMENT

On motion of Halliburton Oil Well Cementing Company, plaintiff and appellee in the above numbered and entitled cause, through undersigned counsel and on suggesting to the Court that the State of Louisiana is a party hereto; that the case involves important questions concerning the sales and use tax of the State of Louisiana on which this Honorable Court has not before decided; that many other cases are being held pending a decision in this case; and on further suggesting that this case should be placed on the preference docket and should be given a special assignment by the Court under the provisions of Section 4 of Rule IX of this Honorable Court,

It Is Ordered that this case be placed on the preference docket and be specially assigned for argument.

Signed in New Orleans, Louisiana, this ..... day of November, 1960.

....., Justice, Supreme Court of Louisiana.

By: B. B. Taylor, Jr., of Taylor, Porter, Brooks, Fuller & Phillips, 1100 Louisiana National Bank Building, Baton Rouge, Louisiana, Attorneys for Appellee.

[fol. 118] Certificate of service (omitted in printing).

[fol. 119]

SUPREME COURT OF LOUISIANA

No. 44,934

HALLIBURTON OIL WELL CEMENTING COMPANY,

VS.

JAMES S. REILY, Collector of Revenue of the State of Louisiana.

On Appeal From the Nineteenth Judicial District Court In and for the Parish of East Baton Rouge, State of Louisiana

Honorable Jess Johnson, Judge

OPINION—February 15, 1961

HAMLIN, Justice.

The following two questions are presented for our determination on this appeal from a judgment rendered in favor of Halliburton Oil Well Cementing Company and against Robert L. Roland,[1] Collector of Revenue of the State of Louisiana, in the sum of $43,325.63, plus 2% interest from December 13, 1956 until paid:

(1) In the calculation of the Louisiana Use Tax (LSA-R.S. 47:301 et seq.) assessed on equipment brought into the State of Louisiana from another state, should such tax be levied only on the component parts of the whole, where the owner himself fabricated and assembled the whole or finished product outside of the State of Louisiana, or should the tax be levied on the cost price of the finished fabricated product as set forth in the statute, supra, so as to include labor and shop overhead?

---

[1] James S. Reily, originally named as defendant, was lawfully succeeded in office by Robert L. Roland, who was substituted as defendant on July 16, 1959.

[fol. 120] (2) Is machinery or equipment purchased in another state through the transactions of so-called isolated sales and later brought into the State of Louisiana for use subject to the Louisiana Use Tax?

Halliburton Oil Well Cementing Company (hereinafter referred to as Halliburton) is engaged in the business of servicing oil wells throughout the oil producing states of the United States, including Louisiana. Its principal place of business is maintained in Duncan, Oklahoma, and there it manufactures, assembles, installs, and builds up specialized oil well service units which it employs in its oil well service operations. Halliburton procures from various vendors throughout the United States raw materials, semi-finished, and finished articles necessary for the manufacture, assembly, installation, and build-up of well service units. When a well service unit has been completely processed at Duncan, Oklahoma and has been tested for operation, it is assigned to one of Halliburton's various field camps in the United States, where it obtains a permanent situs unless transferred to another field camp location where greater use may be made of it. A certain number of these units came to rest in Louisiana and obtained a permanent situs therein servicing oil wells located in Louisiana. Halliburton's books are kept in Oklahoma; they reflect the cost value of the units as comprising material cost, labor cost, and shop overhead.

In addition to the above units, Halliburton keeps in Louisiana certain cementing service units it purchased from the Spartan Tool and Service Company of Houston, Texas when that company determined that it should no longer continue in the business of servicing oil wells, and an airplane purchased from the Western Newspaper Union of New York, which company is not regularly engaged in the business of selling airplanes.

[fol. 121] For the years 1952, 1953, 1954, and 1955, Halliburton regularly filed with the State of Louisiana tax returns showing the amount of use tax money, as reflected by its calculations, due the State of Louisiana by it on service units employed in the State. Such amounts were paid to the State of Louisiana at the time of filing the statutory use tax returns.

On December 13, 1956, after lengthy correspondence and numerous conferences, Halliburton paid to the Collector of Revenue of the State of Louisiana (hereinafter referred to as Collector), under protest (LSA-R.S. 47:1576), a deficiency tax assessment of $57,278.17, representing principal and interest, and also paid additional interest of $142.83; it denied that $43,189.27, plus a proportionate part of the additional interest, was due the State of Louisiana. By stipulation the deficiency tax assessment was allocated in the following manner:

Phase	*Principal*	*Interest*	*Total*
1. Labor and shop overhead	$30,942.20	$5,296.23	$36,238.43
2. Cost price versus depreciated value	2,296.83	386.15	2,682.98
3. Isolated sales	3,789.20	615.02	4,404.22
Total amount in dispute	$37,028.23	$6,297.40	$43,325.63
Amount not in dispute	12,063.03	2,032.34	14,095.37
Totals	$49,091.26	$8,329.74	$57,421.00

Halliburton brought suit for a return of the amount in dispute, supra, alleging that the Use Tax, if interpreted and applied as the Collector would interpret and apply it to Halliburton, would cast upon the taxpayer (Halliburton) a burden more onerous than that which would be levied by the Louisiana Sales and Use Tax had the transactions in- [fol. 122] volved occurred in Louisiana; and, that a state Use Tax may be upheld as reasonable, legal and constitutional, only insofar as the burden thereof is equal to and not in excess of the burden of the Sales Tax of that same state, to which Sales Tax said Use Tax is complementary. Plaintiff further alleged that the tax demanded of it infringed upon the right of regulation of interstate commerce by Congress (Article I, Section 8, Clause 3, Constitution of the United States), in that it was an attempt by the State of Louisiana to lay a tax on the privilege of engaging in interstate commerce and upon the carrying on of the busi-

ness of interstate commerce. It still further alleged that it would be deprived of its property without due process of law, contrary to the protection and guaranty granted under the Constitution of the United States and particularly under the Fourteenth Amendment thereof and under Article I, Section 2, of the Constitution of the State of Louisiana, should it be required to pay the tax assessed.

The trial court agreed with plaintiff and rendered judgment in its favor after trial on the following three issues:[2]

> "1. For the purposes of calculating the Louisiana Use Tax upon items of specialized oil well equipment brought into the State of Louisiana and used therein by petitioner, the Collector included the actual cost to petitioner of the physical equipment and parts purchased by petitioner outside of Louisiana, and incorporated, outside of Louisiana, into such specialized equipment, and also the labor and shop overhead, incurred by petitioner in constructing said specialized oil field equipment in its shops in Oklahoma. Halliburton admits that the physical equipment and parts should properly be included in the tax base, but denies that the labor and shop overhead were properly included. (This phase of the matter is hereinafter sometimes called '*The labor and shop overhead phase*' of this case.)
>
> "2. For the purpose of calculating the Louisiana Use Tax upon items of specialized oil well equipment [fol. 123] brought into the State of Louisiana and used herein by petitioner, the Collector used the 'original cost' of all equipment brought into the State of Louisiana without allowance for depreciation which had occurred prior to the equipment being brought into the State of Louisiana. Halliburton contends that the values used for computing the use tax due on this equipment should not be greater than the fair market value of the equipment at the time it was brought into Louisiana. (This phase of the matter is hereinafter sometimes called '*The cost price versus depreciated value phase*' of this case.)

[2] These issues appear in a stipulation of facts contained in the record.

"3. For the purpose of calculating the Louisiana Use Tax upon items of equipment brought into the State of Louisiana and used herein by petitioner, the Collector assessed the use tax on the value of certain equipment (including specialized oil well equipment and an airplane) which was purchased outside Louisiana by petitioner, from vendors not regularly engaged in the business of selling such items. Halliburton denies that any sales tax or use tax is due to the State of Louisiana on these items. (This phase of the matter is hereinafter sometimes called '*The isolated sale phase*' of this case.)"

Appellant (Collector) agrees that the trial court was correct in its ruling on Issue #2, "The cost price versus depreciated value phase," supra, in view of the holding of the Supreme Court of Louisiana, in the case of Fontenot v. S. E. W. Oil Corporation, 232 La. 1011, 95 So.2d 638, that a person importing an article for use in this state must pay the "use" tax the same as if it had been sold at retail, and that such use shall be considered equivalent to a sale at retail as of time of importation. The S. E. W. decision was handed down on May 6, 1957; the petition in the instant matter was filed on December 13, 1956, and judgment was rendered by the trial court on October 13, 1959. It is stated in appellant's brief:

"The Collector sought to impose the use tax on certain equipment which had sustained actual depreciation prior to its being brought into the State using as a tax base the original cost to the taxpayer. This Court has now held in the case of Fontenot vs. S.E.W. Oil Corporation, 232 La. 1011, 95 So.2d 638 (1957) that cost price means the fair market value of property [fol. 124] at the moment of taxation—the time it becomes a part of the mass of property of the State and not original cost at the time of acquisition.

"The Collector agrees that the reasoning of the S.E.W. case correctly analyzes the intent and purpose of the Louisiana Use Tax and therefore will not argue this phase."

The Collector urges that the district court erred in not finding that the incidence of the Louisiana Use Tax is nondiscriminatory; that it is equal in its application because it is upon the use of tangible personal property after it has been withdrawn from commerce; that the combined effect and purpose of the Sales Tax and Use Tax is to insure that all tangible personal property used or consumed in the State of Louisiana bears a 2% tax, either at the time of its original sale at retail in the state or at the time of its first use in the state if a 2% sales tax has not already been paid by the user to any other state.

The law imposing the tax in question is contained in Chapter 2 of Title 47, Louisiana Revised Statutes, entitled, "Sales Tax." The provisions pertinent to this case read as follows:

LSA-R.S. 47:302:

"A. There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property, as defined herein, the levy of said tax to be as follows:

"(1) At the rate of two per centum (2%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every retail sale.

"(2) At the rate of two per centum (2%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax.

* * * * * * *

[fol. 125] "C. * * *

"The tax levied in this Section shall be collected from the dealer, as defined herein, shall be paid at the

time and in the manner hereinafter provided, and shall be, in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to taxes levied under the provisions of Chapter 3 of Sub-title II of this Title."

LSA-R.S. 47:301 (13) (As Amended):

"(13) 'Sales price' means the total amount for which tangible personal property is sold, including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed 6% of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold."

LSA-R.S. 47:301 (10):

"(10) 'Retail sale,' or 'sale at retail,' means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the collector, upon investigation, finds to be in lieu of sales; provided that sales for resale must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax."

LSA-R.S. 47:301 (3):

"(3) 'Cost price' means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service cost, transportation charges or any other expenses whatsoever."

LSA-R.S. 47:301 (18):

"(18) 'Use' means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business."

[fol. 126] LSA-R.S. 47:301 (4):

"(4) 'Dealer' includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution or for storage to be used or consumed in this state.

"'Dealer' is further defined to mean:

"(a) every person, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state;

"(b) every person who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein;

"(c) any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this Chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property;

* * * * * * *"

LSA-R.S. 47:303:

"The tax imposed under R.S. 47:302 shall be collectible from all persons, as hereinafter defined, engaged as dealers, as hereinafter defined.

"On all tangible personal property imported, or caused to be imported, from other states or foreign

country, and used by him, the 'dealer', as hereinafter defined, shall pay the tax imposed by this Chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of this Chapter, the use, or consumption, or distribution, or storage to be used or consumed, in this state of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event."

LSA-R.S. 47:305:

" * * * * * * *

[fol. 127] "It is not the intention of this Chapter to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of this Chapter to levy a tax on bona fide interstate commerce. It is, however, the intention of this Chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.

"The provisions of this Chapter shall not apply in respect to the use, or consumption, or distribution, or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to, or greater than, the amount imposed by this Chapter has been paid in another state, the proof of the payment of such tax to be according to rules and regulations made by the collector of revenue. If the amount of tax paid in another state is not equal to, or greater than, the amount of tax imposed by this Chapter, then the dealer shall pay to the collector of revenue an amount sufficient to make the tax paid in the other state equal to the amount imposed by this Chapter.

"The 'use tax' under this Chapter shall not apply to tangible personal property owned or acquired in this

> state, or imported into this state, or held or stored in this state, prior to June 7, 1948; but the 'use tax' will apply to all tangible personal property imported or caused to be imported into this state on or after that date, unless the property has previously borne a sales or use tax in another state, equal to or greater than the tax imposed by this Chapter."

The constitutionality of a use tax has been upheld by the Supreme Court of the United States in the case of Henneford, et al. v. Silas Mason Co., Inc., et al., 300 U.S. 577, 57 S.Ct. 524, 81 L.Ed. 814, wherein the Court stated that one of the effects of such a tax must be that local retail sellers will be helped to compete upon terms of equality with retail dealers in other states who are exempt from a sales tax or any corresponding burden. The Court further stated that another effect, or at least another tendency, must be to avoid the likelihood of a drain upon the revenues of the state—buyers being no longer tempted to place their orders in other states in the effort to escape payment of the tax on local sales. The Court then asked, "Do these consequences which must have been foreseen, [fol. 128] necessitate a holding that the tax upon the use is either a tax upon the operations of interstate commerce or a discrimination against such commerce obstructing or burdening it unlawfully?" It answered its question as follows:

> "The tax is not upon the operations of interstate commerce, but upon the privilege of use after commerce is at an end.
>
> "Things acquired or transported in interstate commerce may be subjected to a property tax, nondiscriminatory in its operation, when they have become part of the common mass of property within the state of destination. * * * This is so, indeed, though they are still in the original packages. * * * For like reasons they may be subjected, when once they are at rest, to a nondiscriminatory tax upon use or enjoyment. * * * The privilege of use is only one attribute, among many of the bundle of privileges that make up

property or ownership. * * * A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively. * * * Calling the tax an excise when it is laid solely upon the use (Vancouver Oil Co. v. Henneford, 183 Wash. 317, 49 P.(2d) 14) does not make the power to impose it less, for anything the commerce clause has to say of its validity, than calling it a property tax and laying it on ownership. 'A nondiscriminatory tax upon local sales * * * has never been regarded as imposing a direct burden upon interstate commerce and has no greater or different effect upon that commerce than a general property tax to which all those enjoying the protection of the state may be subjected.' Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U.S. 147, 153, 52 S.Ct. 340, 341, 76 L.Ed. 673. A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate. * * * " See, Nelson v. Sears, Roebuck & Company, 312 U.S. 359, 85 L.Ed. 888, 61 S.Ct. 586; State v. Pape, 194 La. 890, 195 So. 346; Mouledoux v. Maestri, 197 La. 525, 2 So. 2d 11.

We conclude that under the rulings of the above authorities the "use tax" as applied to plaintiff does not infringe upon the regulation of interstate commerce by Congress. The taxed matter herein had definitely come to rest in Louisiana and had acquired a situs in the State.

[fol. 129] Plaintiff endeavors to set forth the alleged inequality of the use tax as applied to it by arguing that if a local oil well servicing company had manufactured its own equipment in Louisiana it would only have had to pay a sales tax on the component parts employed, whereas plaintiff has been assessed a use tax not only on the component parts but also on the cost of labor and shop overhead. Plaintiff argues, as set forth, supra, that its burden, as compared to that of a local taxpayer, is so unequal as to constitute a violation of the 14th Amendment to the

United States Constitution and of Article I, Section 2, of the Constitution of Louisiana.

"When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guaranties of the Federal Constitution, the states have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. The state may tax real and personal property in a different manner. It may grant exemptions. The state is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure. * * *

"With all this freedom of action, there is a point beyond which the state can not go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legis- [fol. 130] lation, so that all persons similarly circumstanced shall be treated alike.' F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 64 L.ed. 989, 990,

40 Sup. Ct. Rep. 560; * * * " Ohio Oil Company v. Conway, 281 U.S. 146, 74 L.Ed. 775, 50 S.Ct. 310. See, Allied Stores of Ohio, Inc. v. Bowers, 79 S.Ct. 437.

"What does 'equal protection of the laws' mean as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follow the course customarily pursued in the state.

"The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as special subject for discriminating and hostile legislation. It does not require equal rates of taxation on different classes of property, nor prohibit unequal taxation so long as the inequality is not based upon arbitrary classification. Legislation which, in carrying out a public purpose, is limited in its application, does not violate the provision if, within the sphere of its operation, it affects alike all persons similarly situated. In other words it does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. It 'merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.' The rule of equality requires no more than that the same means and methods be applied impartially to all of the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. * * * " Cooley, Taxation, Vol. 1, Fourth Edition, Section 249, p. 533 et seq. See, also, Section 259, p. 558, same volume.

We do not find that the Louisiana Use Tax treats any person differently from any other person in a like circumstance. All users are subjected to the same rate of tax; there is no arbitrary or unreasonable distinction. The

law contains no hostility nor discrimination; it singles out no class of persons as subjects for its assessment.

We do not find that the use tax as herein applied imposes an unconstitutional burden on plaintiff. Plaintiff's comparison, supra, is not apposite. There must be an incidence of taxation; there must be an occurrence which [fol. 131] brings the use tax into effect. In order to have an imposition of a sales tax, there must be a sale. Likewise, to have a levy of a use tax, property must come to rest in the State after leaving interstate commerce, and there must be a user of the property in the State. In the instant case, the fabricated product was transported to, came to rest in, became part of the common mass of property in, and was used in Louisiana. The proper comparison would be between the use tax on the assembled equipment and a sales tax on the same equipment if it were sold. What takes place before the fabricated product leaves interstate commerce and enters the State of Louisiana to rest is not within the contemplation of the statute except for the determination of cost price. Labor and shop overhead are considered incidentally together with other items as a basis for arriving at cost. LSA-R.S. 47:305 states that the intention of the Chapter is to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this State, of tangible personal property after it has come to rest in this State and has become a part of the common mass of property in this State.

LSA-R.S. 47:301 (3) recites that:

> "'Cost price' means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service cost, transportation charges or any other expenses whatsoever."

LSA-R.S. 47:303, supra, states that use tax is paid on all articles of tangible personal property imported and used, the same as if the said articles had been sold at retail for use or consumption in this State. This section was properly

interpreted in the case of Fontenot v. S. E. W. Oil Corporation, 232 La. 1011, 95 So.2d 638, as follows:

> [fol. 132] "According to this section the person importing an article for use in this state must pay the 'use' tax the same as if it had been sold at retail, and such use shall be considered equivalent to a sale at retail as of the time of importation. These provisions, along with the others above mentioned, clearly indicate that the 'use' tax is to be computed on the retail price the property would have brought when imported—that is, its then value or worth."

We conclude that with respect to Issue #1, "Labor and shop overhead phase," the use tax should be levied on "cost price" as set out in Chapter 2 of Title 47 of the Louisiana Revised Statutes, entitled "Sales Tax," supra; the trial court was in error in omitting labor and shop overhead from the valuation assigned to the fabricated service units for use tax assessment.

We now pass to the question of "isolated sales" involved herein.

In support of its contention that the use tax cannot be imposed on tangible property which has come to rest in Louisiana but was purchased in another state through the method of isolated sales, plaintiff relies on the case of State of Alabama v. Bay Towing & Dredging Company, Inc., 90 So. 2d 743, wherein the Supreme Court of Alabama stated:

> "As we see it, if the use tax act is construed as imposing a tax on the use in this state of tangible personal property purchased outside the state in casual and isolated sales transactions, such tax would constitute an unlawful discrimination against interstate commerce, contrary to the Commerce Clause of the United States Constitution, Const. art. 1, sec. 8, cl. 3, since no similar or equivalent tax burden is imposed in connection with the purchase of such property in casual and isolated sales transactions within the state. * * *"

We might say at the outset that we do not feel constrained to follow the Alabama case, supra, because we find that the instant matter does not involve a question of interstate commerce. The alleged taxable property had come to rest in Louisiana and had acquired a situs in this State. Henneford, et al. v. Silas Mason Co., Inc., et al., supra. [fol. 133] Plaintiff argues that if the property alleged to be free from the assessment of the use tax (Issue #3, "Isolated sale phase") had been purchased in Louisiana under similar transactions, it would not have been assessed with a sales tax, and that, therefore, the levy of the use tax on the property deprives plaintiff of its property without due process of law.

In LSA-R.S. 47:301 (10), we find the statement that the term "sale at retail" does not include an isolated or occasional sale of tangible personal property by a person not engaged in such business. In LSA-R.S. 47:305, it is directed that the dealer shall pay the tax imposed by Chapter 2 of Title 47, entitled "Sales Tax," on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state.

The exemption of an isolated sale from the provisions of the sales tax applies strictly to sales within the State of Louisiana; it has no effect whatsoever on any transaction without the state. The direction that the use tax shall be paid in the same manner as if the articles had been sold at retail applies to the method of payment. The property involved herein has not borne a similar tax in another state. Therefore, since the State of Louisiana levied the first assessment on property which was transported to, came to rest in, became part of the common mass of property in, and was used in Louisiana, we find no discrimination nor deprivation of property without due process of law.

We conclude that the trial court was in error in disallowing the tax claimed by the Collector as to Issue #3, "Isolated sale phase."

As stated, supra, the trial judge rendered judgment in favor of Halliburton and against the Collector for $43,- [fol. 134] 325.63, plus interest at the rate of 2% from December 13, 1956, until paid, and for all costs of this suit.

The Collector agrees that the trial court was correct in its ruling on Issue #2, "The cost price versus depreciated value phase," supra, amounting to $2,682.98. Therefore, Halliburton is entitled to the return of this amount.

The trial court was in error in decreeing that all costs be paid by the Collector. LSA-R.S. 13:4521 provides:

> "Except as hereinafter provided, neither the State, nor any parish, municipality, or other political subdivision, public board or commission, shall be required to pay court costs in any judicial proceeding instituted or prosecuted by or against the state or any such parish, municipality, or other political subdivision, board or commission. This Section shall have no application to stenographers' costs for taking testimony." See, also, Per Curiam on Further Application for Rehearing in Louisiana-Nevada Transit Co. v. Fontenot, Collector of Revenue, 233 La. 600, 97 So. 2d 409.

For the reasons assigned, the judgment appealed from in favor of plaintiff is amended by reducing the amount thereof from $43,325.63 to $2,682.98, with interest at the rate of 2% per annum from December 13, 1956, until paid. Appellee to pay all costs, except such as must be borne by appellant under the provisions of LSA-R.S. 13:4521.

[fol. 135] [File endorsement omitted]

SUPREME COURT OF LOUISIANA

[Title omitted]

APPLICATION ON BEHALF OF HALLIBURTON OIL WELL CEMENTING COMPANY, PLAINTIFF-APPELLEE, FOR REHEARING —Filed February 27, 1961

[fol. 136] To the Honorable, the Supreme Court of Louisiana:

The petition and application of Halliburton Oil Well Cementing Company, plaintiff and appellee in the above entitled and numbered matter, respectfully represents that

the decision of this Honorable Court rendered February 15, 1961, reversing the decision of the Nineteenth Judicial District Court, is grossly erroneous both in fact and law, insofar as it reverses the decision of the trial court, and a rehearing should be granted herein, for the following reasons:

1.

Said judgment is erroneous, contrary to law, and prejudicial to plaintiff-appellee for the reasons set forth in the Original Brief filed by plaintiff-appellee in this matter.

2.

Said judgment squarely holds that the State of Louisiana may levy an *excise tax* upon the activity of non-residents doing business in Louisiana which is greater than, and more burdensome than, the same *excise tax* would be where it falls upon the activity of residents of Louisiana engaged in exactly the same line of endeavor.

3.

Said judgment specifically approved and authorizes the State of Louisiana to discriminate against non-residents of Louisiana, doing business in Louisiana, and in favor of residents of Louisiana, by inflicting a discriminatory excise tax upon the non-residents, which is heavier than the comparable excise tax burden which falls upon Louisiana residents engaged in precisely the same activity.

4.

There can be no question but that the tax in question is an excise tax, and not a property tax. This court has so held, in dealing with the New Orleans sales tax, in *Mouledoux* v. *Maestri*, 197 La. 525, 2 So. 2d 11 (1941). This court [fol. 137] stated:

> "It is our conclusion that the '*sales or use tax*' . . . is an *excise* tax . . ." (197 La. at p. 534)

Unquestionably the Use Tax is an "excise tax", and not a property tax. This conclusion is universally reached.

See for example, *Brandtjen & Kluge* v. *Fincher*, 111 P. 2d 979, 980, 44 Cal. App. 2d Supp. 939. See multitude of cases cited in Words and Phrases, Vol. 15(a), p. 171, verbo "Excise."

The judgment of this Honorable Court erred by treating the sales and use tax as though it were a property tax and not an excise tax. For example, at page 2 of the opinion, it is stated:

> "A certain number of these units came to rest in Louisiana and obtained a permanent situs therein servicing oil wells located in Louisiana."

And, at page 6 of this Court's judgment, the argument of the State (subsequently approved) is summarized:

> "The Collector urges that . . . the Louisiana Use tax is non-discriminatory; that it is equal in its application because . . . the combined effect and purpose of the Sales Tax and Use Tax is to insure that *all tangible personal property* used or consumed in Louisiana *bears a 2% tax . . .*"

It is clear that the State is arguing here that the use tax should be regarded as a "property tax." Such argument is contrary to the square holding of this Court in *Mouledoux* v. *Maestri*. See above.

5.

This Court has heretofore clearly established the distinction between a property tax and an excise tax. In State ex rel. *Porterie* v. *Hunt, Inc.*, 182 La. 1073, 162 So. 777 (1935), this Court stated:

> "The distinction between a property tax and an excise tax is set forth in Cooley on Taxation (4th Ed.) vol. 1, p. 131, § 45, as follows, viz.:
>
> 'Generally the answer to the question whether a particular tax is a property tax or an excise tax is so apparent that there is no room for argument; but in [fol. 138] many phases the question has been the subject of much litigation, especially in regard to whether a tax on a corporation is an excise tax or a property

tax. If the tax is directly on property itself, the tax is a property tax; but a tax is an excise tax rather than a property tax where it is not a tax on property as such, *but upon certain kinds of property, having reference to their origin and their intended use.* Another thing to be noted, it has been said, is that the obligation to pay an excise tax *is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege, or engaging in the occupation* which is the subject of the excise, and the element of absolute and unavoidable demand, as in the case of a property tax, is lacking.'" (at p. 1080-1081)

6.

It is clear, therefore, that the Louisiana Use Tax *is an excise tax* and that it is *not a property tax.* It is equally clear that An Excise Tax Is a Tax Upon an Activity. It is a tax upon the privilege of doing or performing a given thing. It is a tax upon the performance of an act. This settled conclusion is stated as follows:

"... in contrast to property taxes, *the actual subject of taxation in connection with an excise is some privilege or activity,* although various kinds of property may be in some way involved in the exercise of the privilege or activity taxed; and that an excise tax may, accordingly be roughly defined as a *tax upon the performance, carrying on, or exercise of some* right, privilege, activity, calling or occupation." 51 Am. Jur. p. 1069, Taxation, Sec. 1255.

7.

It being conclusively settled that

1. *The Louisiana Use Tax is an "excise tax"* and that
2. *An excise tax is a tax upon the privilege of engaging in an activity,*

it becomes pertinent to compare the respective "activities" of the Louisiana resident and of the non-resident (Halliburton), with which we are here concerned.

8.

The United States Supreme Court has squarely held [fol. 139] that state taxation may not discriminate against the "stranger" from another state. To test for discrimination dealing with excise taxes, we must focus our attention on the *activities* of the Louisiana resident and the *activities* of the "stranger from afar" who is doing business in Louisiana—in this case—Halliburton. It is this "activity" which is the subject of the excise tax.

It cannot be questioned but that the *economic activity* of Halliburton in Louisiana, was that of a "manufacturer-user", i.e., a producer which uses the product which is produced, sometimes called a "producer-consumer". See pp. 3 and 69 of Appellee's Original Brief.

9.

The Supreme Court of the United States has held:

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to *determine whether the statute* under attack, whatever its name may be, *will in its practical operation work discrimination against interstate commerce.*" *Best & Co.* v. *Maxwell*, 311 U.S. 454, 61 S. Ct. 335.

10.

The requirement set up by the United States Supreme Court, in *Henneford* v. *Silas Mason Company*, 300 U.S. 577, 81 L. Ed. 841 (1936), for a valid use tax, is as follows:

> "*Equality is the theme* that runs through all sections of the statute . . .
>
> "When the account is made up, the stranger from afar is subject to *no greater burdens* as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but *the sum is the same when the reckoning is closed . . .*"

. . . . . .

"In each situation the burden borne by the owner is balanced by *an equal burden* where the sale is strictly local . . ."

11.

The Louisiana Collector of Revenue has specifically [fol. 140] recognized that the Use Tax may not exceed the sales tax. Article 2-3 of the Regulations (quoted in full at p. 31 of our Original Brief) states:

"The two taxes, Sales and Use, stand as complements to each other and taken together provide *a uniform tax* . . ."

12.

And this Court, in the very opinion of which we seek a re-examination, stated that the idea of the Use Tax was to permit local residents to "compete upon terms of *equality* . . ." with persons from "other states." (at p. 9 of the opinion).

13.

Until the rendition of this decision in this Halliburton case, there existed no judicial utterance anywhere, nor any written or published utterance anywhere (save by the Collector herein), which suggested that the use tax might be so construed and enforced so as to require that the non-resident must

". . . compete upon terms of *inequality* . . ."

with persons residing in Louisiana.

14.

Yet, in this case (and in this case juridically alone) it has been held that the Louisiana Collector of Revenue may levy an additional tax burden upon the "activities" of "strangers from afar", while at the same time exempting the "activities" of local residents from the burden of that tax. *The Collector has stipulated that he would discriminate against the non-resident.* We here quote those stipulations:

I. *"If Halliburton had . . . operated . . . at a location within the State of Louisiana,* there would have been a sales tax due to the State of Louisiana upon the cost of materials purchased in Louisiana and a Use Tax on materials purchased outside of Louisiana; but *there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead."* (Tr. 57)

II. "It is further stipulated that the entire . . . [purchase price] . . . *would not have been subject to the Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made within the State of Louisiana.*" (Tr. 60)

[fol. 141] The Use Tax is *not a property tax.* The sales and use tax is an excise tax upon an economic activity. It is a tax upon the "doings" of the taxpayers; upon their economic activities. If, ". . . the stranger from afar . . ." is to bear a burden no heavier than that of ". . . the resident of Louisiana . . ." (as the Collector concedes, and even argues), then the only comparison that can be made is to compare *the burden which falls upon the taxpayers* in the two cases, by asking three simple questions:

(1) What is the tax burden upon the *out-of-state taxpayer,* the "stranger from afar?"

(2) What is the tax burden upon the *intra-state taxpayer,* the Louisiana resident?

(3) *Are these two tax burdens equal?*

The Collector has stipulated that Halliburton (or a competitor of Halliburton in the same line of endeavor) would pay no sales or use tax if it set up its shops, and operated, in Louisiana. Yet the Collector demands a 2% use tax from Halliburton. How can the Collector seriously argue that this is equality of treatment?

And, even if we were to concede (arguendo) the validity of the Collector's approach, which we do not, his argu-

ment still falls far short of soundness. *Let us examine his "property tax" approach.*

If a Louisiana resident were to produce and create a finished product with his own hands, he would pay a sales tax on the parts he bought in Louisiana, and a use tax on the parts he brought in from outside the state. The State would collect 2% on all physical materials put into this finished piece of manufactured "property." *But the Louisiana resident would not pay either a sales tax or a use tax, nor any property tax, nor any sort of tax, on his own labor, and his own industry, and his own overhead.* The Collector has stipulated that, if Halliburton operated in Louisiana, the intangible element of labor and overhead would Not be taxed. Thus the 2% tax on the finished [fol. 142] intra-state "property" would *exclude* the value of the labor and overhead.

On the other hand, the Collector would *include* the value of the labor and overhead in valuing the "property", if the labor and overhead expense were incurred outside the state, and then transported (in interstate commerce) across the state line.

There is simply no approach to this case, by which the Collector can soundly sustain his position.

We repeat, the Collector ignores (and would have this Court ignore) the fact that Halliburton is a *manufacturer, which uses its own work product.* Halliburton is a "manufacturer-user," sometimes called a producer-consumer. The fairness, and legality, of Halliburton's tax burden cannot be determined by comparing its economic activity with that of an intra-state seller or *purchaser-at-retail.*

16.

We respectfully submit that this Court erred in holding (at p. 13 of its opinion) that, ". . . The proper comparison would be between the use tax on the assembled equipment and a sales tax upon the same equipment *If* it were sold."

This is a conclusion that Halliburton may be taxed *as If* it had engaged in an activity in which (in fact) it did not engage. An excise tax may not be levied upon an "activity" that did not occur!

We respectfully submit that taxation cannot be levied upon assumptions which are admittedly contrary to fact. The Collector argues that the tax burdens are equal (upon the Louisiana residents and the out-of-state persons) because the sales tax, paid by a *purchaser-at-retail* in Louisiana, includes labor and overhead.

With respect, this is an effort to compare the incomparable. The price paid by a purchaser-at-retail (upon which a sales tax is paid) includes three elements (a) the cost of the physical parts incorporated in the finished product, (b) the labor and overhead element, and (c) profit.

[fol. 143] It is perfectly proper to compare the sales tax upon a sale-at-retail in Louisiana, with a use tax levied upon property *purchased* outside the state. There the economic act upon which the incidence of the two taxes fall, is the same. And the tax burden is equal, falling upon all three above-named elements. We concede this.

But this is not what the Collector contends for here. He would compare the economic activity (the business endeavor) of an out-of-state "*manufacturer-user*" (Halliburton) with that of an *intra-state purchaser-at-retail.*

And this is the specious element in the Collector's argument.

We submit that the only fair comparison would be to compare the tax burden of an "*out-of-state manufacturer-user,*" with the tax burden of an "*intra-state manufacturer-user.*" In other words, if Halliburton had in Louisiana a direct competitor, in exactly the same operation, would the tax burden of each be the same?

Obviously, the Collector would demand the 2% use tax solely from Halliburton, the out-of-state operator, and he would exempt the intra-state operator. We submit that the Collector's position is discriminatory and illegal; that his position is unsound.

17.

Upon oral argument, one of the Justices of this Honorable Court engaged in substantially the following colloquy with counsel for the Collector:

Question by the Court:

"Would the tax upon the Louisiana resident be the same as the tax on the non-resident [producer-consumer]?"

Counsel for Collector:

[Answer not responsive to question]

Upon repeated questioning by the Court, Counsel for the Collector answered:

"No."

[fol. 144] *Question by the Court*:

"Would the use tax upon the non-resident [manufacturer-user] be greater than that upon the competing Louisiana resident?"

Counsel for Collector [after considerable evasion]:

"Yes."

Question by the Court:

"WHY?"

Counsel for the Collector never answered this question. It was because this question could not be answered that the Collector filed no brief in the trial court. It was because this question could not be answered that the Collector's brief lacks continuity and logic. Indeed, it lacks logic to such an extent that this Court, in writing its opinion, did not even try to follow the pattern of argument in the Collector's brief.

After five years consideration of the problem (Repeat: Five years), the Collector could not come up with a catenation of thought that this Court could follow. So the Court had to write an independent opinion.

18.

This Court has actually held that it is all right for the State of Louisiana to erect a tax wall around the state,

so that a non-resident producer-consumer must pay a tax that the competing resident-producer-consumer need not pay!

As one member of this Court remarked, at oral argument (in substance): "If the State can do that, could not it raise the Use Tax to 3%, or 10%, or 50%, while leaving the Sales Tax at 2%?" Of course it could.

If Your Honors do not see fit to reconsider this decision, it is the law of Louisiana that the sales tax could be repealed (on transactions within the state) while a use tax at the rate of 50%, or 100%, could be levied upon goods brought into the state across state lines. The decision cannot be interpreted otherwise.

We respectfully submit that such a decision is *not pos-*
[fol. 145] *sible* in these United States. We beg the Court to reconsider.

19.

In five years of wrangling with the Collector over this problem, counsel for Halliburton was never able to obtain from the Collector, or any of his representatives, any articulation of reasons why the Collector's position was sound.

And when the Collector wrote his brief to this Court, he was still so unable to justify his position that he never addressed himself directly to the issue. And the issue, of course, is "*Why should Louisiana tax the non-resident producer-consumer more heavily than the resident producer-consumer?*"

It simply cannot be said (Repeat: "Can-Not") be said there is no discrimination here. The case is submitted on stipulation. And, the Collector has stipulated:

> "*If Halliburton had . . . operated . . . at a location* within Louisiana . . .
>
> * * * * * * *
>
> ". . . *there would have been no Louisiana sales tax or use tax due on the Labor and Shop Overhead.*"

We invited the Collector to face his own stipulation and to explain why it was not a "discrimination" against the

out-of-state operator, in favor of the intra-state competitor. The Collector never addressed himself to the problem.

We now respectfully invite this Court to address itself to the problem of whether or not this is not open, frank, and avowed Discrimination? If this is discrimination, then it is prohibited by the federal constitution. Quod Erat Demonstrandum.

20.

The Collector has Stipulated that he would discriminate in this *excise* tax, in favor of the Louisiana resident and against his direct competitor who comes across state lines, but who engaged in precisely the same "activity."

[fol. 146] *Please Note*:

Let us assume that Halliburton had a direct competitor in exactly the same line of endeavor. And, let us assume that the competing plants were One-Inch apart, separated only by a fence that ran along the boundary line of this State. And, let us put Halliburton just outside the State of Louisiana while putting the competitor just inside the boundary line of the State.

Has not this Court held that the out-of-state operator (Halliburton) would have to pay the Labor-and-Shop Overhead tax Solely because it happened to put its plant *One-Inch beyond the State Line?* Would not the Collector place the tax upon the out-of-state operator *solely because* the products were *transported that additional one-inch distance* across the State line. Would not the Collector exempt from the tax the competing Louisiana operator, whose operation was *one-inch closer to our State Capitol Building?* Has not this Court placed its *imprimatur* of approval upon such one-inch type of discrimination? We submit that the question posed in this paragraph 20 should be thoughtfully considered.

21.

The Collector has not denied that he would thus discriminate against the inter-state transaction. To the contrary, he has stipulated that he would discriminate.

The Supreme Court is the Court-of-Last Resort of Louisiana. *What this Court finally does will live forever in the printed and bound annals of the History of the United States of America.* As we see it (respectfully), this Court erred in approving the actions of the Collector when he interpreted the Use Tax so as to discriminate against the non-resident operator. The Louisiana Collector of Revenue is the tax collecting agency of the State. But the Collector is here before the highest judicial tribunal, which declares impartially between taxpayer and state. If the Collector was "wrong" in his discrimination, the taxpayer (under the American system) may seek relief before this Court. This the taxpayer has done in the sure anticipation that its cry for justice would be heard. The taxpayer here [fol. 147] reiterates that cry for justice. The taxpayer begs this Court to reconsider its decision.

The taxpayer does not challenge the Louisiana Use Tax, as unconstitutional. It does challenge the Collector's interpretation of the tax, in this particular case.

The taxpayer here sincerely believes that if Your Honors will critically re-read the Court's opinion, the Court will see fit to grant a rehearing. The taxpayer earnestly prays this Court—in its search for rightness—to thoughtfully re-examine its prior decision herein.

Wherefore, petitioner prays that a rehearing be granted in this cause, and that, after due proceedings had, the judgment rendered herein on the 15th day of February, 1961, be set aside and reversed and that judgment be entered herein affirming the decision of the Nineteenth Judicial District Court of the State of Louisiana, in favor of Halliburton Oil Well Cementing Company, as prayed for in the original petition.

Applicant further prays for all general and equitable relief.

Respectfully submitted,

Taylor, Porter, Brooks, Fuller & Phillips, Attorneys for Halliburton Oil Well Cementing Company, By B. B. Taylor, Jr.

Baton Rouge, Louisiana

February 24, 1961.

—Certificate—

We hereby certify that a copy of the foregoing petition and application for rehearing has this day been mailed, [fol. 148] postage prepaid, to Collector of Revenue, State of Louisiana, addressed as follows:

Mr. Roland Coereham, Collector of Revenue
State of Louisiana
c/o Legal Division
Department of Revenue
Capitol Annex Building
Baton Rouge, Louisiana

Attention: Mr. Chapman Sanford, Attorney

B. B. Taylor, Jr.

Baton Rouge, Louisiana

February 24, 1961.

[fol. 149]

SUPREME COURT OF THE STATE OF LOUISIANA

Court was duly opened, pursuant to adjournment. Present, Their Honors: John B. Fournet, Chief Justice, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Walter B. Hamlin, Joe W. Sanders, and Frank W. Summers, Associate Justices.

MINUTE ENTRY OF ORDER DENYING PETITION FOR REHEARING—March 20, 1961

Action by the Court on Applications for Rehearings

Rehearings were refused in the following cases:

* * * * * * * *

44,934 Halliburton Oil Well Cementing Co. v. James S. Reily, Collector of Revenue of the State of Louisiana.

[fol. 153]

SUPREME COURT OF LOUISIANA

[Title omitted]

ORDER FOR SUPERSEDEAS, STAY OF EXECUTION AND STAY AND RECALL OF MANDATE AND STAY AND ARREST OF JUDGMENT—May 23, 1961

On consideration of the petition and motion of Halliburton Oil Well Cementing Company, plaintiff-appellee in the above numbered and entitled cause:

It Is Ordered that the execution and mandate and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed, and arrested pending and until the 20th day of June, 1961, in order to permit Halliburton Oil Well Cementing Company to appeal herein to the Supreme Court of the United States, and (in the alternative) to seek a writ of certiorari from said Court and, in the event Halliburton Oil Well Cementing Company shall timely file a Notice of Appeal to the Supreme Court of the United States (or timely apply to said Court for writs of certiorari or review), then It Is Ordered that the execution and mandate, and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed and arrested until the Supreme Court of the United States shall have made its final disposition of this case, and until the disposition of [fol. 154] this matter shall have become final, Roland Cocreham, the Collector of Revenue of the State of Louisiana, and any successor to said office, is ordered and commanded to retain the tax moneys dependent upon this suit segregated and in escrow, in accordance with law and, in the event that the original record of the proceedings herein shall have been returned by this Court to the trial court, Valsin J. Courville, the Clerk of the Supreme Court of the State of Louisiana is ordered and commanded to recall said record, and obtain possession thereof, as quickly as this may be reasonably accomplished, and thereafter to hold the same in the possession of this Court, until further

order, pending said appeal or application for writs, the orders herein granted being conditioned upon Halliburton Oil Well Cementing Company furnishing bond with good and solvent surety in the amount of Five Hundred Dollars ($500.00) conditioned according to law and further conditioned upon the said Halliburton Oil Well Cementing Company being liable for any and all damages which may accrue to the said Collector of Revenue of the State of Louisiana by reason of this supersedeas.

New Orleans, Louisiana, this 23rd day of May, 1961.

Jno. B. Fournet, Chief Justice, Supreme Court of the State of Louisiana.

[fol. 155]

SUPREME COURT OF LOUISIANA

[Title omitted]

SUPERSEDEAS BOND—May 23, 1961

Be It Known that whereas the undersigned Halliburton Oil Well Cementing Company has applied for and obtained from the Supreme Court of the State of Louisiana an order of supersedeas, staying and recalling the mandate herein and staying and arresting the judgment herein, and the execution thereof, pending the appeal of this cause to the Supreme Court of the United States (or, alternatively, the seeking of writs of certiorari or review from said Court), conditioned upon the furnishing of this obligation and bond,

Now Therefore, we the undersigned Halliburton Oil Well Cementing Company, as principal, and Great American Insurance Company, New York, New York, as Surety, do hereby promise and agree that the said Halliburton Oil Well Cementing Company shall prosecute its appeal (or alternatively, apply for writs of certiorari or review) to good effect and answer all damages and costs if it fail to make its plea good, and shall satisfy whatever judgment may be rendered against it upon the final disposition of this matter.

[fol. 156] And for the payment of which damages and costs, we the said Halliburton Oil Well Cementing Company and Great American Insurance Company, do by these presents firmly bind and obligate ourselves, our heirs, and legal representatives in solido, in the full sum of Five Hundred Dollars ($500.00), in favor of Roland Coereham, Collector of Revenue of the State of Louisiana.

Halliburton Oil Well Cementing Company, Principal, By: B. B. Taylor, Jr., Attorney and Agent-in-Fact.

Great American Insurance Company, Surety, By: Elsie Fridge, Agent-in-Fact.

Approval of Bond

The foregoing bond is hereby accepted and approved as to form and surety.

New Orleans, Louisiana, this 23rd day of May, 1961.

Jno. B. Fournet, Chief Justice, Supreme Court of Louisiana.

[fol. 158] [File endorsement omitted]

SUPREME COURT OF LOUISIANA

No. 44,934

HALLIBURTON OIL WELL CEMENTING COMPANY

vs.

COLLECTOR OF REVENUE OF THE STATE OF LOUISIANA
(Since Succeeded by Roland Coereham)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 2, 1961

I. Notice is hereby given that Halliburton Oil Well Cementing Company, the Appellee above named, hereby

appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Louisiana, entered in this suit on the 20th day of March, 1961 (said judgment having been initially rendered on the 15th day of February, 1961, and the finality thereof having been suspended by the timely filing of an Application for Rehearing, which Application for Rehearing was denied on the 20th day of March, 1961), which judgment upheld the validity of the Louisiana Sales and Use Tax Statute (La. R.S. 47:301, et seq.) as against the contention that said tax statute is repugnant to and violative of the Constitution of the United States.*

This appeal is taken pursuant to Title 28 United States Code, par. 1257(2).

[fol. 159] II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The complete transcript of the proceedings had in the Nineteenth Judicial District Court of the State of Louisiana in and for the Parish of East Baton Rouge (which proceedings bear the number 58,785 on the docket of said District Court), in the form in which the same was filed with and before the Supreme Court of the State of Louisiana;

2. A complete transcript of all proceedings had in this matter in the Supreme Court of Louisiana, including but not limited to the following:

   a. Motion to Substitute Parties filed November 15, 1960, and any order issued pursuant to same.

   a-1. Motion for Special Preference.

   b. The printed Brief on behalf of Halliburton Oil Oil Well Cementing Company filed on December 29, 1960, and Brief on behalf of Collector of Revenue.

---

* The opinion and judgment of the Louisiana Supreme Court is reported at 127 So. 2d 502.

c. Opinion and Judgment of this Honorable Court rendered February 15, 1961.

d. Application for Rehearing filed by Halliburton Oil Well Cementing Company on February 27, 1961.

e. Extract from the Minutes of the Supreme Court of the State of Louisiana, showing Denial of the Application for Rehearing on March 20, 1961.

[fol. 160] f. Application for Supersedeas, Stay and Recall of Mandate.

g. Order of Supersedeas, Stay of Execution and Stay and Recall of Mandate and Stay and Arrest of Judgment.

h. Supersedeas Bond and the Approval thereof by the Chief Justice of the Supreme Court of the State of Louisiana.

i. This Notice of Appeal.

III. *Questions Presented by this Appeal*:

The issue herein arises within the following framework:

1. The Louisiana Sales Tax, like the Sales Tax laws of other states, is levied only upon transactions which occur within the borders of the state, i.e., only upon intrastate transactions.

2. It was found (in Louisiana and elsewhere) that such sales taxes, falling only upon the intrastate transactions, tended to drive business out of the state. People would go outside the state for their major purchases, thus avoiding the intra-state Sales Tax.

3. Accordingly "compensating" Use Tax statutes were enacted *to prevent discrimination* against local merchants. The Use Tax falls solely upon the use, within the state, of goods acquired outside the state and when brought into the state across the interstate borderline. The Use Tax was designed to prevent discrimination against intrastate transactions.

[fol. 161] In Louisiana, the two taxes are combined into one statute, called the Sales and Use Tax Statute (La. R.S. 47:301, et seq.).

4. Since the Use Tax falls only upon the situation in which there has been an *interstate* movement of goods, such a statute was quickly attacked as repugnant to the interstate commerce clause of the Federal Constitution.

5. The Use Tax was upheld, as constitutional, and as Not a discriminatory burden upon interstate commerce, solely because (in the case then at issue) it did not exceed the comparable Sales Tax of the same state and was merely complementary to the sales tax and precisely equal to the sales tax, and—therefore—the Use Tax did not "discriminate" against the interstate transaction. *Henneford* v. *Silas Mason Company*, 300 U.S. 577, 57 S.Ct. 524, 81 L.Ed. 841 (1936).

6. In a case, however, where the Use Tax of a state, falling solely on *interstate* transactions, is more onerous than the Sales Tax, falling on comparable *intrastate* transactions, then the Use Tax loses the fiat of the *Henneford* decision, and is unconstitutional because it does discriminate against the transactions which are in interstate transactions. This is the position of appellant taxpayer.

7. It is to be noted that the Louisiana Sales and Use Tax is an *excise* tax levied upon the privilege of performing an act. *Mouledoux* v. *Maestri*, 197 La. 525, 2 So. 2d 11 (1941).

• • •

The issue here is whether or not the State of Louisiana [fol. 162] (through its Collector of Revenue) may openly and avowedly discriminate against the taxpayer whose operations cross interstate border lines, and in favor of the competing taxpayer who operates wholly within Louisiana boundaries.

The result of the Louisiana Supreme Court decision is that Louisiana may discriminate against the interstate business. That Court has held that the Louisiana Use Tax (falling only on interstate operations) may be designed and enforced so as to place a heavier tax burden upon the interstate operations than the burden of the Sales Tax (falling only upon the comparable intrastate operations) would be. The decision is tantamount to a holding that Louisiana may erect a wall of taxes at the state line. The incidence of the additional tax burden falls upon the act of crossing the state border line.

There are two factual aspects to this case:*

First: *"The Labor and Shop Overhead Phase"*

The Louisiana Collector here applies the Use Tax (to an interstate situation) with a burden more onerous than the burden which the Sales Tax would levy upon the comparable intrastate situation.

In its shops at Duncan, Oklahoma, appellant Halliburton produces and fabricates complex truck-borne oil-well servicing equipment which it uses in Louisiana. See Photographs Annex 8 and Annex 9 to the original Petition (Tr. 41-42). Halliburton uses this type of equipment in Louisiana, under contract, but does not sell the equipment.

If Halliburton had its shops in Louisiana, instead of in Oklahoma, a sales tax would fall upon its operations (i.e., the production and use of an item of equipment) as follows: (1) a sales tax would fall upon the purchase price of the [fol. 163] truck chassis when it was purchased by Halliburton and (2) a sales tax would fall upon the purchase price of each item of physical equipment (e.g., motors, pipes, metal, gaskets, etc.) which was purchased by Halliburton for incorporation into the finished product item. But, of course, there would be no sales tax whatsoever, and no use tax whatsoever upon the "labor and shop overhead" which went into the assembly operation, which transformed the raw

* Initially there was a Third Phase to this case entitled "The Cost v. Depreciated Value" phase. That phase of the case is no longer at issue and appeal is not taken from the decision below, insofar as it relates to this phase of the case.

truck chassis and the other raw metal parts into the complex finished item which serves Louisiana oil producers so well. This is incontestable and uncontested.

In effect, the Collector had stipulated that his position is discriminatory:

> "If Halliburton had purchased its materials, operated its shops, and incurred its Labor and Shop Overhead expenses at a location within the State of Louisiana, there would have been a sales tax due to the State of Louisiana upon the cost of the materials purchased in Louisiana and a Use Tax on materials purchased outside of Louisiana; but there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead." (Stipulation—Par. IV. Tr. 57)

Nevertheless, says the Collector, because Halliburton has its shops in Oklahoma, and not in Louisiana, an additional 2% tax must be paid. Because Halliburton operates its construction shops in Oklahoma and not in Lonisjana, the Collector would demand a penalty tax measured by 2% of the "labor and shop overhead" expended by Halliburton, in its Duncan, Oklahoma, shops.

Obviously, the Collector would tax this Labor and Shop Overhead for the sole and only reason that it took place outside Louisiana. Halliburton contends that this is discrimination of the clearest and most elementary type.

Halliburton concedes that (as an out-of-state "manufacturer-user") it brings these complex and vastly useful [fol. 164] pieces of equipment into Louisiana, where they serve the Louisiana oil producers so well. And, Halliburton is quite willing to pay to the State of Louisiana a Use Tax in exactly the same sum as the State Tax would be, upon a comparable operation (by an intrastate "manufacturer-user") in Louisiana. But, says Halliburton, "No penalty should be levied upon us merely because we have our shops in Oklahoma and not in Louisiana."

It is unequivocally clear that, if Halliburton operated entirely in Louisiana, and had its shops in Louisiana, there would be neither any sales tax, nor any use tax, upon

the "labor and shop overhead" element which it put into its finished products. Halliburton respectfully submits that there should be no increase in its Louisiana tax burden, simply because it first creates its products in Oklahoma, and then moves them across the state line into Louisiana, where it uses them to serve Louisiana oil operators.

Halliburton contends that such a tax, based solely upon the movement of goods in interstate commerce, is discriminatory and is an unconstitutional burden upon interstate commerce.

Second: *"The Isolated Sales Phase"*

The Louisiana Sales Tax Statute (R.S. 47:301(10)) provides specifically that:

> ". . . nor [shall the terms 'sale at retail'] include an isolated or occasional sale of tangible personal property by a person not engaged in such business."

The Louisiana Department of Revenue Sales Tax Regulations provide:

> "Art. 2-33 Casual and Isolated Sales—
>
> "The tax does not apply to casual and isolated sales by persons not engaged in the business of selling such tangible personal property . . ."

[fol. 165] It is clear, therefore, that a "casual and isolated sale, by a person not engaged in the business of selling . . ." the type of property at issue, is completely exempted from the Louisiana Sales Tax. This is uncontested.

The Collector of Revenue contends that the statute and regulations cannot be construed to grant a comparable "isolated sales" exemption in the case of the use tax. The Collector concedes that an "isolated or casual" sale made in Louisiana is exempted from the Louisiana sales tax. The Collector contends, however, that the use tax is levied by the taxing statute, and may properly fall upon the use, in Louisiana, of property which was acquired through an "isolated or casual sale" made in another state.

The issue is squarely raised here. Halliburton purchased certain oil field equipment from Spartan Tool and Service

Company, of Houston, Texas, when that concern went out of business. And it purchased an airplane from the "Western Newspaper Union, of New York." It is stipulated that neither of these vendors was in the business of selling such equipment. It is stipulated that such sales were "casual, occasional and isolated sales . . ." (Stipulation of Facts, Par. VI, Tr. 59-60.)

It is completely clear that if these "isolated sales," transactions had taken place within the borders of Louisiana, no sales tax would have fallen upon the transaction. Nor would any use tax have been incurred by anybody. This is stipulated.

The Collector's position, therefore, is that because these isolated sales occurred outside of Louisiana, the taxpayer must pay a two per cent "use" tax, that would not fall upon the use of the properties if the transactions had occurred in Louisiana. It is clear that this tax (aggregating $4,404.22) is demanded by the Collector solely because the [fol. 166] isolated sales transactions occurred outside Louisiana and the goods thereafter were brought across the state line. Thus, the Collector concedes that, but for this element of interstate transportation, he would not be demanding this tax money at all.

Suppose Halliburton had taken delivery of the newspaper company's airplane at the Moisant Airport, in New Orleans, so that the sale was a Louisiana transaction. Obviously—no sales tax on this "isolated sale transaction." In the present case, the state demands the 2% use tax solely because the "isolated sale transactions" took place outside Louisiana and, thereafter, the airplane, etc., were transported, in interstate commerce, across the Louisiana state border line.

We quote from the Stipulation of Facts:

> "It is further stipulated that the entire . . . [purchase price] . . . would not have been subject to the Louisiana Sales Tax or Louisiana Use Tax had the purchase of such equipment been made within the State of Louisiana." (Tr. 60)

Reference is made to the decision in *State* v. *Bay Towing and Dredging Company, Inc.*, 90 So. 2d 743 (Alabama,

1956) in which the taxpayer's present position was precisely upheld.

* * * *

Thus, the following questions are presented by this appeal:

1. Whether or not the State of Louisiana, through its Collector of Revenue, may apply an excise tax, the Louisiana Sales and Use Tax, so that the burden thereof bears more heavily upon a taxpayer who comes into Louisiana from outside the state than the burden of the same tax statute would bear upon a [fol. 167] Louisiana resident engaged in precisely the same economic activity as that of the more-heavily-taxed non-resident.

2. Whether or not the Supreme Court of the State of Louisiana may constitutionally render a judgment which specifically approves and authorizes the State of Louisiana to discriminate against non-residents of Louisiana, doing business in Louisiana, and in favor of residents of Louisiana, by inflicting a discriminatory excise tax upon the non-residents, which is heavier than the comparable excise tax burden which falls upon Louisiana residents engaged in precisely the same activity.

3. In view of the fact that the Supreme Court of the United States has held that:

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce."
>
> *Best & Co. v. Maxwell*, 311 U.S. 454, 61 S.Ct. 335.

and in view of the fact that the requirement set up by the Supreme Court of the United States, in *Henneford* v. *Silas Mason Company*, 300 U.S. 577, 81 L.Ed. 841 (1936), for a valid state use tax, is as follows:

"Equality is the theme that runs through all sections of the statute . . .

"When the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed . . ."

* * *

"In each situation the burden borne by the owner is balanced by an equal burden where the sale is strictly local . . ."

[fol. 168] whether or not the State of Louisiana may tax (via its Sales and Use Tax) the non-resident ("the stranger from afar") more heavily than it would tax a resident Louisiana citizen engaged in the same identical business operation.

4. Whether or not the Louisiana Sales and Use Tax Statute, as applied by the Louisiana Collector of Revenue so as to tax non-residents more heavily than he would apply and levy the same excise tax upon Louisiana residents, is offensive to and repugnant to and violative of the Constitution of the United States, including but not limited to the following clauses thereof:

   a. *The Interstate Commerce Clause*, being Article I, Section 8, Clause 3, of the Constitution of the United States;

   b. *The Due Process Clause*, being a portion of the Fourteenth Amendment to the Constitution of the United States;

   c. *The Equal Protection of the Laws Clause*, being a portion of the Fourteenth Amendment to the Constitution of the United States;

it being the principal contention of Halliburton Oil Well Cementing Company (taxpayer herein) that the discriminatory tax burden, of which complaint is made, does fall upon persons who conduct a part of their operations outside the State of Louisiana and then cross the state line into Louisiana, whereas said tax burden does not fall upon persons who conduct identical operations entirely within the interstate border line of the State of Louisiana, and said taxpayer contends that such discriminatory taxation directly infringes upon the right of regulation of inter-[fol. 169] state commerce, vested in the Federal Congress, for the reason, among others, that it is an attempt by the State of Louisiana to lay an excise tax on the privilege of engaging in interstate commerce and upon the carrying on of a business in interstate commerce.

* * * *

Alternatively, in the event that this appeal shall have been improvidently taken, Halliburton Oil Well Cementing Company prays that these papers, whereon this appeal was taken, be regarded and acted on as a petition for writ of certiorari in accord with the provisions of 28 U.S.C. 2103.

Charles Vernon Porter and Benjamin Brown Taylor, Jr., of Taylor, Porter, Brooks, Fuller & Phillips, Attorneys for Halliburton Oil Well Cementing Company, Appellant in Connection with the Appeal here Prosecuted to the Supreme Court of the United States, 1100 Louisiana National Bank Building, Baton Rouge, Louisiana.

Of Counsel: Taylor, Porter, Brooks, Fuller & Phillips, 1100 Louisiana National Bank Building, Baton Rouge, Louisiana.

Proof of Service (omitted in printing).

[fol. 171] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 172]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 9, 1961

Appeal from the Supreme Court of the State of Louisiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 9, 1961